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FEDERAL GOVERNMENT'S RELATIONSHIP WITH AMERICAN INDIANS

HEARINGS

BEFORE THE

SPECIAL COMMITTEE ON INVESTIGATIONS

OF THE

SELECT COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

FEBRUARY 2, 6, 7, 8, 9, 1989
WASHINGTON, DC

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FEDERAL GOVERNMENT'S RELATIONSHIP WITH AMERICAN INDIANS

THURSDAY, FEBRUARY 2, 1989

U.S. Senate,
Select Committee on Indian Affairs,
Special Committee on Investigations,
Washington, DC.

The Special Committee on Investigations met, pursuant to recess, at 10:06 a.m., in room 216, Hart Senate Office Building, Hon. Dennis DeConcini (chairman of the special committee) presiding.

Present: Senators DeConcini and McCain.

Staff present: Kenneth Ballen, J. Sedwick Sollers III, John Brandolino, Andrew Klingenstein, and Kathy Momot.

Senator DeConcini. The Special Committee on Investigations will come to order.

This morning we are going to hear from two witnesses, John Paddock and Donald James, and pursuant to procedure for immunity I will yield to counsel, Wick Sollers.

Mr. Sollers. Good morning, Mr. Stuehringer.

Mr. Stuehringer. Good morning, Mr. Sollers.

Mr. Sollers. Good morning, Mr. and Mrs. Paddock, Mr. James.

Mr. Paddock. Good morning.

Mr. James. Good morning.

Mr. Sollers. Mr. Stuehringer, you are an attorney representing John Paddock and Donald James in this proceeding, is that correct?

Mr. Stuehringer. Yes, sir.

Mr. Sollers. Mr. Stuehringer, I will pose questions directed toward your clients, John Paddock and Donald James, formally for the record.

Mr. James, what has been the relationship between Native American Construction and John Paddock Construction?

Mr. Stuehringer. Mr. Sollers, on behalf of my client, Mr. James—he respectfully declines to answer that question on the grounds of his Constitutional privilege of silence.

Mr. Sollers. I will now direct a question to Mr. Paddock.

Mr. Paddock, what has been your relationship with Peter McDonald, chairman of the Navajo Tribe?

Mr. Stuehringer. Mr. Sollers, likewise with respect to my client, Mr. Paddock—he respectfully declines to answer that question on the grounds of his Constitutional privilege of silence.

Mr. Sollers. Mr. Chairman, John Paddock and Donald James have refused to answer questions posed by the special committee.

I request that the chairman of the special committee communicate the immunity orders obtained for both John Paddock and Donald James.

Senator DECONCINI. Mr. Stuehringer, I am hereby communicating to you two orders, issued by the U.S. District Court for the District of Columbia, directed toward your clients, John Paddock and Donald James. The orders provide in substance that your clients may not refuse to provide evidence to the special committee on the basis of their privilege against self-incrimination. It provides that evidence obtained from your clients under these orders may not be used against them in any criminal proceedings.

A copy of the orders are at the witness table, and without objection, will be placed in the record pursuant to these orders, and I direct your clients to answer the questions put to them by Mr. Sollers.

Mr. STUEHRINGER. Very well, Mr. Chairman.

[Copies of the immunity orders appear in appendix. See pp. 297, 298.]

Senator DECONCINI. Would the witnesses please stand to take the oath?

[Witnesses sworn.]

Senator DECONCINI. Mr. Sollers.

Mr. SOLLERS. Thank you, Mr. Chairman.

STATEMENT OF JOHN PADDOCK, PRESIDENT, FAITHCO, ACCOMPANIED BY JAMES STUEHRINGER, ESQ.

Mr. SOLLERS. Beginning with Mr. Paddock: please state your full name for the record, sir.

Mr. PADDOCK. John A. Paddock.

Mr. SOLLERS. Where do you live, sir?

Mr. PADDOCK. I live at 14155 North Luckett Road in Marana, AZ.

Mr. SOLLERS. How are you employed, sir?

Mr. PADDOCK. I am self-employed as a general contractor.

Mr. SOLLERS. What is the name of your contracting business?

Mr. PADDOCK. John Paddock Construction, Incorporated, which was later changed to FAITHCO Limited.

Mr. SOLLERS. For the sake of simplicity, when I question you about John Paddock Construction, we will take that to mean John Paddock Construction and its successor FAITHCO. Is that satisfactory?

Mr. PADDOCK. Very much so.

Mr. SOLLERS. Where is John Paddock Construction located?

Mr. PADDOCK. At the same address in Marana.

Mr. SOLLERS. How long have you been in the contracting business?

Mr. PADDOCK. For 30 years.

Mr. SOLLERS. What type of contracting work do you do?

Mr. PADDOCK. I do general contracting, primarily for various government agencies.

Mr. SOLLERS. For what Government agencies have you performed work?

Mr. PADDOCK. I started out doing work for various Air Force bases around the State of Arizona, the Veterans Hospital, the

Corps of Engineers, the Army, HUD, EDA, Bureau of Indian Affairs, Indian Health Service—I think that's about all.

Mr. SOLLERS. Have you also performed some work for the Navajo Nation?

Mr. PADDOCK. Yes; I have.

Mr. SOLLERS. Who is Don James?

Mr. PADDOCK. Don James is a Navajo whom I have known for 14 years or so.

Mr. SOLLERS. In fact, Mr. James is seated two seats to your right, is that correct?

Mr. PADDOCK. That's correct.

Mr. SOLLERS. Did you hire him to work for you at a certain point?

Mr. PADDOCK. Yes; I did.

Mr. SOLLERS. When was that?

Mr. PADDOCK. On the first job we did on the Navajo Nation, Don came to work for us. That was in 1977.

Mr. SOLLERS. In what capacity did you hire him?

Mr. PADDOCK. He came to work for us as a carpenter.

Mr. SOLLERS. Was he a salaried employee?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Was there a time that you set up a company called Native American Construction?

Mr. PADDOCK. Yes.

Mr. SOLLERS. What was the purpose of setting up Native American?

Mr. PADDOCK. It was to allow us to bid on the preference work which required a percentage of Indian ownership.

Mr. SOLLERS. We are talking about the various Federal and tribal programs that would come under the rubric of Indian Preference, is that correct?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. Also known as Indian set-aside work, as well?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Whose idea was this?

Mr. PADDOCK. The idea originally was broached by a Navajo that we were working with who was an employee of the tribe. I spoke with an attorney, who drew up the paperwork.

Mr. SOLLERS. Why were you interested in performing Indian Preference work?

Mr. PADDOCK. Normally the remote work on Indian reservations is less competitive and consequently is better profit work than work in the towns.

Mr. SOLLERS. Is the market soft at times on the reservation?

Mr. PADDOCK. At times it is quite soft, yes.

Mr. SOLLERS. And it was a market that you wished to get a piece of, is that correct?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. What was the structure of Native American?

Mr. PADDOCK. Native American was a corporation which Don James had the stock in——

Mr. SOLLERS. Was he originally 100 percent stockholder?

Mr. PADDOCK. Yes; he was.

Mr. SOLLERS. Were you given a management contract?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. What generally were the terms of that employment agreement?

Mr. PADDOCK. That I had control of the management of Native American Construction, and there was some language in there about my being reimbursed for expenses and getting a percentage of profits.

Mr. SOLLERS. So the effect of the management agreement, I take it, was to transfer control of Native American to you, is that correct?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. Then there was some additional language, but was that language basically sham language?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Indeed, Native American was a shell company, is that correct?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. Did Native American have any assets whatsoever?

Mr. PADDOCK. No, sir.

Mr. SOLLERS. Did it have any equipment, property, land, or an office?

Mr. PADDOCK. None of the above.

Mr. SOLLERS. Actually, as to all contracts bid by Native American—who performed the work on the projects?

Mr. PADDOCK. John Paddock Construction, basically.

Mr. SOLLERS. And occasionally some other subcontracts were meted out as well, is that correct?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. Did Mr. James subsequently form a subcontractor partnership which allowed him to obtain some subcontracts as well?

Mr. PADDOCK. That's correct. At my encouragement, we formed James Brothers Carpentry, which allowed him to subcontract part of the work.

Mr. SOLLERS. But as to Native American itself, it was purely a front to obtain Indian Preference work, is that right?

Mr. PADDOCK. That is right.

Mr. SOLLERS. In fact, in a letter to a surety company, you actually labeled Native American as "a tool" to allow you to obtain Indian Preference work, is that correct?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. For the record, we have blown up a copy of that letter.

Is that a letter that you sent to Seaboard Surety Company?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. A letter that you sent in an effort to obtain bonding on particular work?

Mr. PADDOCK. Yes.

Mr. SOLLERS. And in that letter, you stated that Native American was "a tool" to allow you to obtain Indian Preference, correct?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. Why was it necessary to make such a statement to Seaboard Surety?

Mr. **Paddock**. The surety companies were hesitant about bonding a company that I was not shown as being the owner of, and this was to reassure them that I did have control of the company.

Mr. **Sollers**. To assure Seaboard Surety that you had control of the company, correct?

Mr. **Paddock**. That is correct.

Mr. **Sollers**. They had some concerns about the relationship—whether or not John Paddock Construction was truly backing Native American, is that true?

Mr. **Paddock**. Yes.

[See p. 299.]

Mr. **Sollers**. With regard to any profits earned by Native American—what happened to them?

Mr. **Paddock**. They went to John Paddock Construction.

Mr. **Sollers**. There was a complete pass-through of any earnings of Native American to John Paddock Construction, is that true?

Mr. **Paddock**. That is correct.

Mr. **Sollers**. Was there any written agreement whatsoever between you and Don James concerning profits?

Mr. **Paddock**. No; there was not. We had a verbal agreement.

Mr. **Sollers**. Simply an oral understanding?

Mr. **Paddock**. Yes.

Mr. **Sollers**. What was the oral understanding?

Mr. **Paddock**. The idea was that I saw that Don James was an excellent carpenter and had run some jobs for us as foreman or superintendent. We wanted to keep that relationship going, and this was a way to obtain more work to keep us working together.

Mr. **Sollers**. But as to profits, Mr. James knew from the beginning that he was not to participate in them, is that correct?

Mr. **Paddock**. That is correct.

Mr. **Sollers**. He remained during the entire period, a salaried employee, a wage earner?

Mr. **Paddock**. Yes; I would say so. I was going to mention the subcontracting that he did, which I would assume would be considered more than just a salaried employee.

Mr. **Sollers**. With regard to some subcontracting work which he did as part of this James Brothers Carpentry—he did participate in some profits there, is that true?

Mr. **Paddock**. That is correct.

Mr. **Sollers**. What was Mr. James' salary range during the entire period that he worked for you, beginning in 1977 up to the present?

Mr. **Paddock**. In 1977, I believe he was earning approximately $15,000 per year, and in 1987, he earned in excess of $65,000.

Mr. **Sollers**. And Mr. James' role in the Native American jobs was what? What were his duties?

Mr. **Paddock**. Basically, to run the job, to superintendent it. We talked daily on the phone. He would turn in the employees' time, coordinate subcontractors, and generally run the job.

Mr. **Sollers**. Did he also perform carpentry work?

Mr. **Paddock**. Yes; he did.

Mr. **Sollers**. But all payroll, bookkeeping, accounting, etc., was handled by John Paddock Construction, is that true?

Mr. **Paddock**. That is correct.

Mr. Sollers. You have already stated which Government agencies you have worked for and that includes BIA, HUD, IHS, et cetera, is that true?

Mr. Paddock. That is correct.

Mr. Sollers. Do certain agencies have a certification process?

Mr. Paddock. Yes.

Mr. Sollers. Is that a process to ensure or request contractors to submit information which allows them to see whether or not they are qualified Indian contractors?

Mr. Paddock. Yes.

Mr. Sollers. Was Native American certified to do Indian work?

Mr. Paddock. Yes.

Mr. Sollers. Did you submit certifications to HUD?

Mr. Paddock. Yes.

Mr. Sollers. On those certifications, did you make financial representations?

Mr. Paddock. Correct.

Mr. Sollers. Those financial representations for Native American were based on the financial statement of what company?

Mr. Paddock. Of John Paddock Construction.

Mr. Sollers. Did you deal with a variety of individual Indian Housing Authorities?

Mr. Paddock. We dealt with three, basically—several jobs with the Navajo Housing Authority, one with the Papago, which is now called Tohono O'odham, and the San Carlos Apaches. We had one job with them.

Mr. Sollers. Did the Indian Housing Authorities ever know your relationship—the relationship between John Paddock, Native American, and Don James?

Mr. Paddock. I don't think they did fully, no.

Mr. Sollers. Were you ever disqualified by any Indian Housing Authority?

Mr. Paddock. No.

Mr. Sollers. Were questions raised at times by Indian Housing Authorities?

Mr. Paddock. Yes.

Mr. Sollers. Did they ever discover what the true relationship was?

Mr. Paddock. No.

Mr. Sollers. Was it because they did not ask the right questions?

Mr. Paddock. Yes, definitely.

Mr. Sollers. I take it that the Navajo Nation also did not know the true relationship between John Paddock Construction and Don James, is that true?

Mr. Paddock. That's true.

Mr. Sollers. Mr. Paddock, have you observed, in your experience in Indian Preference work, a number of other fronts operating on the reservations?

Mr. Paddock. Yes.

Mr. Sollers. Approximately how many have you seen?

Mr. Paddock. At least 8 or 10.

Mr. Sollers. In fact, is that one reason that you set up Native American?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. Tell us a little bit about that—what caused you to do that?

Mr. PADDOCK. As I said before, we had been working on the Navajo Reservation and we saw the opportunity. There was work coming out which was HUD work, which required these sort of companies, and that is what caused us to do it.

Mr. SOLLERS. You observed other fronts already taking some of that work?

Mr. PADDOCK. Yes.

Mr. SOLLERS. And you were anxious to get a piece of the work?

Mr. PADDOCK. Certainly.

Mr. SOLLERS. Is fronting a substantial problem?

Mr. PADDOCK. Yes; I think it is.

Mr. SOLLERS. Has Indian Preference and the resulting fronting problem been helpful to Native Americans?

Mr. PADDOCK. To Native Americans?

Mr. SOLLERS. Yes.

Mr. PADDOCK. I don't think it has generally, no.

Mr. SOLLERS. Why do you think that?

Mr. PADDOCK. Because there is normally a limited benefit to only one individual, and that is the front person. Oftentimes, in my opinion, those front people are not even construction people. They don't have any desire or ability to carry on as contractors.

Mr. SOLLERS. Does the front individual often receive simply a fee for qualifying a non-Indian company for Indian Preference projects?

Mr. PADDOCK. I can not state that positively, but that is my feeling, yes.

Mr. SOLLERS. Is bonding a substantial problem?

Mr. PADDOCK. Yes; it is.

Mr. SOLLERS. Do you know any Indian general contractors that do not have a non-Indian backer who have a fair bonding capacity?

Mr. PADDOCK. I know of none.

Mr. SOLLERS. Is Don James capable of bonding a project today?

Mr. PADDOCK. No, sir.

Mr. SOLLERS. Did you obtain bonding on all projects performed by Native American—by you, I mean John Paddock Construction?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Mr. Paddock, you were qualified as an Indian contractor, and by you I mean you had the qualification for Native American as an Indian contractor before the Zah administration came in on the Navajo Nation, is that true?

Mr. PADDOCK. That's true.

Mr. SOLLERS. Were you decertified as an Indian-qualified contractor under the Zah administration?

Mr. PADDOCK. Yes, I was.

Mr. SOLLERS. What year was that, if you recall?

Mr. PADDOCK. After 1982—I am going to say it was probably 1983. The certifications for the Navajo Tribe run on a yearly basis, and whenever our certification ran out, we were disqualified.

Mr. SOLLERS. Were you interested in obtaining work on the reservation?

Mr. PADDOCK. Yes.

Mr. SOLLERS. And by the way—do you know why you were decertified by the Zah administration?

Mr. PADDOCK. I have no idea.

Mr. SOLLERS. Had anything changed in your relationship with Native American?

Mr. PADDOCK. No, sir.

Mr. SOLLERS. During the Zah administration—and that spanned, I believe, 1982 to 1986—did Native American perform any work on the reservation?

Mr. PADDOCK. Yes—well, Native American did not, but John Paddock Construction did.

Mr. SOLLERS. How about Native American?

Mr. PADDOCK. No, Native American did not perform any.

Mr. SOLLERS. Was Native American essentially dormant during the Zah administration?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. I take it you were interested in reviving Native American's work, is that true?

Mr. PADDOCK. Yes.

Mr. SOLLERS. I am going to turn to Mr. James now for a few minutes, Mr. Paddock, and I will be back with you in a moment.

Mr. PADDOCK. All right.

STATEMENT OF DONALD JAMES, PRESIDENT, NATIVE AMERICAN CONSTRUCTION AND ENGINEERING, ACCOMPANIED BY JAMES STUEHRINGER, ESQ.

Mr. SOLLERS. Mr. James, please state your full name for the record.

Mr. JAMES. Donald James.

Mr. SOLLERS. Where do you live, Mr. James?

Mr. JAMES. Fort Defiance, AZ.

Mr. SOLLERS. How are you employed?

Mr. JAMES. I work for John Paddock.

Mr. SOLLERS. Where are you from originally, Mr. James?

Mr. JAMES. Klagetoh, AZ.

Mr. SOLLERS. Are you a full-blooded Navajo?

Mr. JAMES. Full-blooded.

Mr. SOLLERS. What has been your construction experience?

Mr. JAMES. After I graduated from high school in 1971, I went on to Haskell Indian Junior College and went to a 2-year vocational school there and worked for a small contractor for awhile. Then I went to Phoenix and built coolers for a few months, and then went to Kansas and worked as a carpenter. I came back to the reservation 1 year after that and started doing carpentry work for different contractors. I found John Paddock, and I worked for him as a carpenter, then did the foreman and superintendent jobs from there. That's still going on.

Mr. SOLLERS. And you were hired by John Paddock somewhere around 1977, is that true?

Mr. JAMES. That is correct.

Mr. SOLLERS. As a carpenter?

Mr. JAMES. I was a carpenter then, yes.

Mr. SOLLERS. Are you still doing carpentry work?

Mr. JAMES. Yes; I am.

Mr. SOLLERS. But you have also—I believe you testified—been a foreman as well on Native American/John Paddock Construction projects, is that true?

Mr. JAMES. Yes; I started as a carpenter and as I got better with the construction, then he put me as a foreman. Then I got better at it and he put me in as a superintendent, running all his work.

Mr. SOLLERS. Sometime in 1980, the Native American idea—by that I mean the formation of Native American—was presented to you, is that correct?

Mr. JAMES. Correct.

Mr. SOLLERS. What was your reaction to that?

[No response.]

Mr. SOLLERS. Did it sound like a good idea to you?

Mr. JAMES. Yes.

Mr. SOLLERS. What was the purpose of Native American, in your understanding?

Mr. JAMES. To get jobs on the reservation for John Paddock and to provide work for me, too.

Mr. SOLLERS. Did Native American in fact begin to bid jobs on the reservation?

Mr. JAMES. Yes.

Mr. SOLLERS. Who decided what jobs to bid?

Mr. JAMES. John Paddock.

Mr. SOLLERS. Who performed the work?

Mr. JAMES. John Paddock.

Mr. SOLLERS. Was Native American a shell company without any assets?

Mr. JAMES. It was a shell, yes.

Mr. SOLLERS. You were the 100 percent owner of stock in Native American when it was formed, is that correct?

Mr. JAMES. That is correct.

Mr. SOLLERS. Did you have an understanding from the beginning that all profits of Native American would be passed through to John Paddock Construction?

Mr. JAMES. Correct.

Mr. SOLLERS. Did you ever receive any profits from Native American?

Mr. JAMES. No; I did not.

Mr. SOLLERS. But as Mr. Paddock testified, you did receive some profits from a subcontractor, James Brothers Carpentry, is that correct?

Mr. JAMES. That is correct.

Mr. SOLLERS. Mr. Paddock has always paid you a wage, is that true?

Mr. JAMES. True.

Mr. SOLLERS. Who obtained bonding on all of your projects?

Mr. JAMES. John Paddock.

Mr. SOLLERS. Mr. James, is bonding a significant problem for a small contractor or subcontractor such as yourself?

Mr. JAMES. Yes; it is.

Mr. SOLLERS. Why is it so difficult for you to obtain bonding?

Mr. JAMES. Financially, the Navajo don't have the assets or property they are supposed to own, land and stuff like that. It's money they don't have.

Mr. SOLLERS. Do the bonding companies require various assets, whether it be land, equipment, et cetera, to assure them that they would have something to look to if there were a default?

Mr. JAMES. Yes.

Mr. SOLLERS. Do you live on the reservation?

Mr. JAMES. Yes; I do.

Mr. SOLLERS. Does that cause a problem for you in attempting to obtain bonding?

Mr. JAMES. Yes; it does.

Mr. SOLLERS. Why is that?

Mr. JAMES. When I tried to get bonding one time on my own, they asked me to turn in a financial statement. I put all the stuff I owned and the cash, and they told me I am not qualified to get bonding because I don't have land or any equipment or the money to put up for the bonding.

Mr. SOLLERS. Do you have your general contractor's license?

Mr. JAMES. No; I do not.

Mr. SOLLERS. Do you intend to try to get it?

Mr. JAMES. Hopefully.

Mr. SOLLERS. How were decisions made on who was to perform work?

Mr. JAMES. John Paddock made the decisions.

Mr. SOLLERS. Did Native American itself ever perform any work on any jobs?

Mr. JAMES. No.

Mr. SOLLERS. I take it that you transferred control of Native American to John Paddock in the employment agreement, is that true?

Mr. JAMES. True.

Mr. SOLLERS. You knew this from the beginning, right?

Mr. JAMES. Right.

Mr. SOLLERS. Mr. James, in your experience on the Navajo Reservation, are there a number of fronts operating there?

Mr. JAMES. Yes.

Mr. SOLLERS. Are they benefiting the Native Americans?

Mr. JAMES. I don't think so.

Mr. SOLLERS. Are there many legitimate Indian general contractors operating on the reservation?

Mr. JAMES. There are probably one or two.

Mr. SOLLERS. Is most work being performed by non-Indian companies?

Mr. JAMES. Yes.

Mr. SOLLERS. Does that hurt Indian subcontractors?

Mr. JAMES. Yes; it does.

Mr SOLLERS. How does it hurt them?

Mr. JAMES. First of all, the bonding—if there is a big job on the reservation like a school, they don't have the bonding to be able to bid with the big companies, so they bring their own subcontractors in.

Mr. SOLLERS. Do non-Indian companies frequently bring in their own subcontractors and not hire Indian subcontractors?

Mr. **James**. That is correct.

Mr. **Sollers**. Are Indian subcontractors sometimes pushed out of the job, even if they are hired in the first place?

Mr. **James**. Yes; they are.

Mr. **Sollers**. Who benefits from these fronting situations?

Mr. **James**. The general contractors.

Mr. **Sollers**. Mr. James, have you found it difficult to obtain tribal contracts?

Mr. **James**. No.

Mr. **Sollers**. You don't think it is difficult to obtain tribal contracts?

Mr. **James**. Yes and no. Yes, it is hard.

Mr. **Sollers**. Why is it hard?

Mr. **James**. There is a lot of favoritism involved.

Mr. **Sollers**. What do you mean by favoritism?

Mr. **James**. In a small project, where three or four houses are to be renovated or something like that, the higher officials give it to their friends who are subcontractors or who know a little bit about contracting. They just give it to them without putting it out in the open.

Mr. **Sollers**. Have you ever been approached for bribes?

Mr. **James**. No; I haven't.

Mr. **Sollers**. Have you ever been approached for favors or gratuities?

Mr. **James**. No.

Mr. **Sollers**. Have you ever provided any favors, gratuities, or bribes?

Mr. **James**. No.

Mr. **Sollers**. Do you think the fact that you have not provided them has affected your ability to get work?

Mr. **James**. Yes.

Mr. **Sollers**. Is it your understanding that John Paddock Construction is winding down its business now?

Mr. **James**. Yes.

Mr. **Sollers**. Mr. James, let's assume that next year John Paddock Construction is out of business and that you are still working on the reservation. What do you think your income would be?

Mr. **James**. Construction is very slow now on the reservation and it probably will get slower, so I would be lucky to get $20,000 next year.

Mr. **Sollers**. So you think that your income would go from $65,000 down to $20,000 if John Paddock were to go out of existence?

Mr. **James**. Probably.

Mr. **Sollers**. You have already testified that you do not have a general contractor's license, is that true?

Mr. **James**. I do not have it, no.

Mr. **Sollers**. And you don't have any bonding capacity—is that also true?

Mr. **James**. True.

Mr. **Sollers**. If business is so bad on the reservation, and without John Paddock there to back you, what are you going to have to do to make a living?

Mr. JAMES. I will have to look for carpenter's work or supervise somebody's jobs, or try to get a contractor's license—if I don't, I have to go off the reservation to look for work.

Mr. SOLLERS. Do you know what you are going to do yet?

Mr. JAMES. I would like to be a subcontractor, you know.

Mr. SOLLERS. Thank you very much, Mr. James.

Mr. Paddock, I would like to return to you now.

Mr. PADDOCK. All right.

Mr. SOLLERS. Mr. Paddock, do you know Peter MacDonald, chairman of the Navajo Tribe?

Mr. PADDOCK. Yes; I do.

Mr. SOLLERS. When did you meet Mr. MacDonald?

Mr. PADDOCK. I met him in the Summer of 1986.

Mr. SOLLERS. How did you meet him?

Mr. PADDOCK. I met him at a dinner, a fund-raiser, which was to kick off his campaign for chairman of the Navajo Nation.

Mr. SOLLERS. As you already testified, you had been decertified—Native American had been decertified—as a qualified Indian contractor under the Zah administration, is that true?

Mr. PADDOCK. That's true.

Mr. SOLLERS. Were you interested in seeing Peter MacDonald reelected as chairman of the Navajo Tribe?

Mr. PADDOCK. Yes; I was.

Mr. SOLLERS. At some point, did you offer him your pilot and plane during his reelection campaign?

Mr. PADDOCK. Yes; I did.

Mr. SOLLERS. Did Mr. MacDonald subsequently call you and accept this offer?

Mr. PADDOCK. Yes; he did.

Mr. SOLLERS. What was your understanding when you made the offer as to the extent of the trips?

Mr. PADDOCK. I felt when I made the offer that it would help him, since the reservation is so large, to get from one end of it to the other, on occasion. I did not really envision the number of trips that it eventually ended up being.

Mr. SOLLERS. Did he begin calling you on a frequent basis for access to your pilot and plane?

Mr. PADDOCK. Yes.

Mr. SOLLERS. In fact, did you have to rent or hire another plane when your plane wasn't available for Mr. MacDonald?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Indeed, the trips not only occurred during the campaign but continued after Mr. MacDonald was elected in November 1986, true?

Mr. PADDOCK. That's true.

Mr. SOLLERS. Did it become the case that Mr. MacDonald basically had your plane on call for a substantial period of time?

Mr. PADDOCK. I would say so, yes.

Mr. SOLLERS. When you made this original offer, did you ever envision that the acceptance by Mr. MacDonald would end up being approximately 35 trips on your plane?

Mr. PADDOCK. No sir, I did not feel it would be anywhere near that many.

Mr. SOLLERS. Out of those 35 trips, on how many occasions did you specifically invite him to travel on your plane?

Mr. PADDOCK. I think only once.

Mr. SOLLERS. That would have been a trip to Las Vegas, is that true?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. You have had a chance to briefly review this chart, and it was compiled from information that you provided to us, is that right?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. The out of pocket cost that you paid, for the benefit of the chairman, was in excess of $12,000—is that true?

Mr. PADDOCK. Yes.

Mr. SOLLERS. What sort of expenses does that consist of?

Mr. PADDOCK. I would say pilot expenses and fuel.

Mr. SOLLERS. Did John Paddock Construction take that as a business expense?

Mr. PADDOCK. Yes; we did.

Mr. SOLLERS. What was the fair market value of the air time of those trips?

Mr. PADDOCK. The airplane that was used would, on the market, no doubt cost about $375 per hour.

Mr. SOLLERS. I think you have seen the tabulation—is it accurate to say that the fair market value of those trips, the air time, would be approximately $60,000?

Mr. PADDOCK. I have not tabulated all of the time, but I would say that is probably true, yes.

[See pp. 300-302.]

Mr. SOLLERS. Again, these trips continued after the chairman was in office and you were bidding on contracts, is that correct?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Did you hope to develop a relationship with Chairman MacDonald?

Mr. PADDOCK. Certainly.

Mr. SOLLERS. Did you hope that Native American would be re-certified to do business as an Indian contractor and that Native American would begin obtaining contracts?

Mr. PADDOCK. Yes; that we would be able to bid on contracts, yes.

Mr. SOLLERS. Shortly after the chairman was inaugurated in January 1987, was Native American in fact re-certified as a qualified Indian contractor on the Navajo Reservation?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. Did you ever turn down a request from Chairman MacDonald to use your plane?

Mr. PADDOCK. No, sir.

Mr. SOLLERS. Once the trips began, were you in a difficult position to say "no" to the repeated requests?

Mr. PADDOCK. I think so, yes.

Mr. SOLLERS. And at a certain point, I take it, you had a substantial investment and it would have made it even more difficult for you to say "no", is that true?

Mr. PADDOCK. That's true.

Mr. SOLLERS. Did you ever receive any compensation from Chairman McDonald for any of these trips?

Mr. **Paddock**. No, sir.

Mr. **Sollers**. However, did the chairman ask you to prepare a dummy bill to cover some of the flights?

Mr. **Paddock**. Yes.

Mr. **Sollers**. Did he tell you why he wanted the dummy bill?

Mr. **Paddock**. It was during the start of the campaign, so that if he was questioned about whose airplane he was using, he could show that it was being billed for.

Mr. **Sollers**. Did the bill indicate various flights that he had taken?

Mr. **Paddock**. Several flights, yes.

Mr. **Sollers**. And charges for those flights?

Mr. **Paddock**. Yes.

Mr. **Sollers**. Did he ever make any payments to you on that bill?

Mr. **Paddock**. No, sir.

Mr. **Sollers**. What happened to the bill?

Mr. **Paddock**. I don't know.

Mr. **Sollers**. Did you deliver it to him?

Mr. **Paddock**. Oh yes, sure.

Mr. **Sollers**. Did you keep a copy of it?

Mr. **Paddock**. I don't believe I have one, no.

Mr. **Sollers**. We mentioned one trip to Las Vegas. Have there been two trips to Las Vegas with Chairman MacDonald?

Mr. **Paddock**. That is correct.

Mr. **Sollers**. The first trip was in December of 1986?

Mr. **Paddock**. Yes.

Mr. **Sollers**. How did that come about?

Mr. **Paddock**. We invited he and his wife to go with us to watch the National Finals Rodeo at Las Vegas.

Mr. **Sollers**. Did you fly the MacDonalds to Las Vegas on that occasion?

Mr. **Paddock**. That is correct.

Mr. **Sollers**. This was a month or so after he had been reelected chairman, is that true?

Mr. **Paddock**. I think so, yes.

Mr. **Sollers**. Do you recall where you stayed?

Mr. **Paddock**. We stayed at Caesar's Palace.

Mr. **Sollers**. Did you pick up all the expenses?

Mr. **Paddock**. I did.

Mr. **Sollers**. When you arrived there, did some other individuals show up that you had not expected?

Mr. **Paddock**. Yes.

Mr. **Sollers**. Who were these people?

Mr. **Paddock**. I don't recall their names.

We took one other person with us besides the MacDonalds.

Mr. **Sollers**. But as to the people that showed up unexpectedly, were they friends of the chairman?

Mr. **Paddock**. Yes, they were.

Mr. **Sollers**. Were you also required to pick up their expenses, too?

Mr. **Paddock**. I picked them up.

Mr. **Sollers**. That had not been cleared with you in any way before the trip, is that correct?

Mr. **Paddock**. That's correct, yes.

Mr. SOLLERS. Was there a second trip to Las Vegas?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Was that about August 1987?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. How did that come about?

Mr. PADDOCK. The chairman called and asked if we would like to go to Vegas, and we said, "Sure, we'll go."

Mr. SOLLERS. Was that the chairman's idea?

Mr. PADDOCK. Yes; he initiated the trip.

Mr. SOLLERS. Did you fly him there again, on that occasion?

Mr. PADDOCK. I did.

Mr. SOLLERS. Who did you actually fly in your plane?

Mr. PADDOCK. We went to Window Rock and picked up Chairman and Wanda MacDonald and another couple, Kent and Trudy Ware.

Mr. SOLLERS. Are they friends of the MacDonalds?

Mr. PADDOCK. Yes; they were on staff.

Mr. SOLLERS. Who else was there in Las Vegas in August of 1987 when you arrived?

Mr. PADDOCK. There were a number of other people, among whom were Bud Brown and Peter MacDonald, Jr.

Mr. SOLLERS. Peter MacDonald, Jr. is the son of the chairman?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. Does he go by the name of Rocky?

Mr. PADDOCK. Yes; he does.

Mr. SOLLERS. Do you know who Bud Brown is?

Mr. PADDOCK. I had met him once before and he was there. Yes, I know Bud Brown.

Mr. SOLLERS. Is he a friend of the chairman?

Mr. PADDOCK. Yes.

Mr. SOLLERS. And had you heard a conversation which indicated that he was somehow involved in the Big Boquillas Ranch deal?

Mr. PADDOCK. Oh yes, I think that was common knowledge at that time.

Mr. SOLLERS. During this trip, were Brown and MacDonald having some meetings?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Were those meetings in which you were not included?

Mr. PADDOCK. No; I was not included in the meetings.

Mr. SOLLERS. Where did you stay?

Mr. PADDOCK. We stayed at the Hilton.

Mr. SOLLERS. Who picked up the rooms?

Mr. PADDOCK. It's my understanding that Bud Brown paid for the rooms. When we checked in, my wife overheard Mrs. MacDonald saying that the rooms would be paid for by Mr. Brown. I told my wife to give them our credit card, that we would pay for our own room, and we thought we had until this investigation when we discovered that we did not have a charge for that room.

Mr. SOLLERS. What is your assumption now as to who picked up the charge for that room?

Mr. PADDOCK. I assume that probably Bud Brown did.

Mr. SOLLERS. Had you specifically heard that Bud Brown was picking up the rooms for the MacDonalds and the rest of the entourage?

Mr. **Paddock**. Yes.

Mr. **Sollers**. Who picked up the dinners on this trip?

Mr. **Paddock**. Bud Brown took the chairman and his wife, my wife and I, and I think two other couples to dinner one night at the Hilton.

Mr. **Sollers**. Did you also pick up a dinner?

Mr. **Paddock**. The following night, I paid for a dinner, yes.

Mr. **Sollers**. What was that charge?

Mr. **Paddock**. $500.

Mr. **Sollers**. $562, or so?

Mr. **Paddock**. Yes.

[See p. 303.]

Mr. **Sollers**. Now, there have been numerous flights, as we discussed—many of those have been for members of the MacDonald family other than Peter MacDonald, Sr. Is that true?

Mr. **Paddock**. That's true.

Mr. **Sollers**. Has that always been at the request of somebody from the MacDonald family?

Mr. **Paddock**. That is correct.

Mr. **Sollers**. Let me direct your attention to December 1987. Did there come a time that Peter MacDonald asked you for some money?

Mr. **Paddock**. Yes.

Mr. **Sollers**. What were the circumstances of that?

Mr. **Paddock**. He asked me into his office and said that he wondered if I could loan him some money—that he was in a bind. He told me that he needed $35,000 and I said that I would loan him that money.

Mr. **Sollers**. Did he tell you specifically what he needed the money for?

Mr. **Paddock**. He did not.

Mr. **Sollers**. Did you agree to lend it to him?

Mr. **Paddock**. Yes, I did.

Mr. **Sollers**. At that time, in December of 1987, did you feel that you were in a difficult position in turning down such a request?

Mr. **Paddock**. Inasmuch as my financial statement, of course, is a matter of record with the tribe, I would have had a hard time telling him that I'm broke and didn't have the money.

Mr. **Sollers**. And of course, you are also aware that he is chairman of the Navajo Nation, is that true?

Mr. **Paddock**. You bet I am aware.

Mr. **Sollers**. Are you aware that he has a substantial amount of influence on the reservation?

Mr. **Paddock**. Yes.

Mr. **Sollers**. Was a promissory note executed?

Mr. **Paddock**. Yes.

Mr. **Sollers**. Does that on the exhibit board appear to be a copy of the promissory note?

[See p. 304.]

Mr. **Paddock**. Yes.

Mr. **Sollers**. Is that your signature and the signatures of Peter MacDonald and his wife Wanda?

Mr. **Paddock**. That is correct.

Mr. **Sollers**. What were the terms of that note, if you recall?

Mr. PADDOCK. It was for 1 year and payable at 10½ percent interest for that year.

Mr. SOLLERS. The due date was December 1, 1988—is that true?

Mr. PADDOCK. That is correct.

Mr. SOLLERS. And interest was simply to accrue, is that right?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Have any payments been made on this loan?

Mr. PADDOCK. No, sir.

Mr. SOLLERS. And it is now obviously past the December 1, 1988 due date, is that correct?

Mr. PADDOCK. That's correct.

Mr. SOLLERS. Have you ever discussed the loan with Peter MacDonald since the day that you loaned him the money?

Mr. PADDOCK. No sir, I have not.

Mr. SOLLERS. Did he ever say, "Thank you," again, or anything to that effect?

Mr. PADDOCK. He certainly thanked me when I loaned him the money, but there has been no other discussion about it.

Mr. SOLLERS. As you sit here today, do you believe that you are going to be paid this money back?

Mr. PADDOCK. As I sit here today, I doubt that I will be. I have serious doubts about it—I certainly felt that it was a loan when I loaned it to him.

Mr. SOLLERS. With regard to the Tribal Headquarters—was there a substantial renovation done?

Mr. PADDOCK. Yes.

Mr. SOLLERS. What was your involvement in that?

Mr. PADDOCK. I was originally asked to prepare an estimate on it with the idea in mind that my company would be the general contractor on it.

Mr. SOLLERS. When was that?

Mr. PADDOCK. It was shortly after the chairman went into office that he told me that he wanted to do some rehab work on the headquarters building, and we started, together with the architect, going over the plans and specifications in an attempt to come up with a contract on it.

Mr. SOLLERS. The original plans—would you characterize them as extravagant?

Mr. PADDOCK. I would say so. There were certainly some repairs needed on the offices—the roof leaked, the carpeting was bad, it needed repainting and a fire sprinkler, and so on—but yes, there were some rather extravagant ideas.

Mr. SOLLERS. Such as?

Mr. PADDOCK. Originally, they were talking in terms of solid mahogany paneling, some of the toilet fixtures, the faucets and whatnot, were actually to be gold plated, and some of the tile work was to be with turquoise inlay—that sort of thing.

Mr. SOLLERS. Did Peter MacDonald tell you that you were to get the general contract on the Tribal Headquarters renovation?

Mr. PADDOCK. Well yes, that was the understanding when we started negotiating it.

Mr. SOLLERS. It subsequently became someone else's contract?

Mr. PADDOCK. Yes.

Mr. SOLLERS. What did you end up getting on the job?

Mr. **Paddock**. We were simply the construction manager for the tribe on it.

Mr. **Sollers**. Did Pat Chee Miller get some of the work on the job?

Mr. **Paddock**. Yes; he did.

Mr. **Sollers**. How about Johnny Donaldson?

Mr. **Paddock**. Yes.

Mr. **Sollers**. Subcontract work?

Mr. **Paddock**. Yes—well, both of them contracted directly with the tribe. They were not really subcontractors in the true sense of the words.

Mr. **Sollers**. Were you working on this job on the Tribal Headquarters renovation when you were hit with the $35,000 request from Chairman MacDonald?

Mr. **Paddock**. Yes; I was.

Mr. **Sollers**. Mr. Paddock, did you also end up loaning a truck of yours to Hope MacDonald?

Mr. **Paddock**. Yes; I did.

Mr. **Sollers**. You thought that would be for a couple of days?

Mr. **Paddock**. Yes; she had been in an accident, and she was going to school in Tucson. Mrs. MacDonald called to ask if I would help her to go down and get a rental car which the insurance company was supposed to provide. The rental car company, subsequently, would not rent her a car because of her age, so I offered her the use of my truck.

Mr. **Sollers**. Hope MacDonald is; who?

Mr. **Paddock**. She is a daughter of Peter MacDonald.

Mr. **Sollers**. How long did you think you would be loaning the truck for?

Mr. **Paddock**. The repairs were supposed to take 4 or 5 days.

Mr. **Sollers**. How long did it end up being?

Mr. **Paddock**. Roughly, 1 month.

Mr. **Sollers**. After that month, did you subsequently get a phone bill?

Mr. **Paddock**. Yes; the truck had a telephone in it, and the next month we got a bill.

Mr. **Sollers**. For about how much?

Mr. **Paddock**. Close to $400.

Mr. **Sollers**. Did anyone ever offer to pay that?

Mr. **Paddock**. No, sir.

Mr. **Sollers**. Were you also hit for a contribution for Wanda MacDonald's birthday party?

Mr. **Paddock**. Yes.

Mr. **Sollers**. Wanda MacDonald is the chairman's wife, correct?

Mr. **Paddock**. Yes.

Mr. **Sollers**. What was the original request?

Mr. **Paddock**. It would be about $400 to $500, they thought. There were a number of people who were going to be contributing to it, to have this party.

[See p. 303.]

Mr. **Sollers**. What did it end up being?

Mr. **Paddock**. It ended up that at the party, the person who was coordinating it came to my wife and I and said, "Gee, we're embarrassed—nobody else has come up with the money," and, "Could we put it on your credit card, and we'll later get you reimbursed?" We said, "Certainly," and we did that.

Mr. SOLLERS. What was your ultimate out of pocket cost on that one?

Mr. PADDOCK. The cost on the credit card was close to $2,500. I don't recall exactly. We were ultimately reimbursed less than one-half of that, close to one-half.

Mr. SOLLERS. So your out of pocket cost is somewhere around $1,200?

Mr. PADDOCK. I'd say $1,200 to $1,300, yes.

Mr. SOLLERS. Finally Mr. Paddock, were you requested for more money from an individual by the name of Roy Cleveland?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Was that in February 1988?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Who is Mr. Cleveland?

Mr. PADDOCK. Mr. Cleveland was an aide to the chairman, I would say, directly under him.

Mr. SOLLERS. How much money did Mr. Cleveland request?

Mr. PADDOCK. He asked for $3,200.

Mr. SOLLERS. Did you again feel—given the public nature of your financial statement—that you were in a difficult position to turn down his request?

Mr. PADDOCK. Yes; and Roy had been working with us in regard to the work on the chairman's office, so I had got to know him fairly well. He told me that he needed the roof fixed on his house and that he would repay this loan at $200 per month, and that he had an income tax refund coming, and that when he got it, he could pay it back right away.

Mr. SOLLERS. And you were supposed to have been getting $200 per month since February of 1988?

Mr. PADDOCK. Yes.

Mr. SOLLERS. Have you received any payments at all?

Mr. PADDOCK. None at all.

Mr. SOLLERS. Do you expect to get any payments on this note?

Mr. PADDOCK. I doubt it.

Mr. SOLLERS. I take it that is a facsimile of the note and the actual check from you to Mr. Cleveland?

[See p. 306.]

Mr. PADDOCK. Yes, it is.

Mr. SOLLERS. Mr. Chairman, that concludes my questions.

Senator DECONCINI. The exhibits that have been referred to here—the actual smaller copies of them—will be inserted into the record at this point.

[The exhibits appear in appendix.]

Senator DECONCINI. I will now yield to the Cochairman, Senator McCain, for questions of the witnesses.

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. James, were you aware of the rules and regulations that generally govern Indian Preference as far as contracting is concerned?

Mr. JAMES. Yes.

Senator MCCAIN. Did you feel that your relationship with Mr. Paddock was one which was consistent with those rules and regulations?

Mr. JAMES. At the time, it was right for me, yes.

Senator MCCAIN. It was right for you, but did you recognize that this relationship did not conform to the intent of the law, or the letter of the law?

[No response.]

Senator MCCAIN. Counsel, this question is in no way intended to require Mr. James to incriminate himself.

Mr. STUEHRINGER. I appreciate that, sir.

Senator MCCAIN. If it does, please advise him not to answer.

Mr. STUEHRINGER. Mr. CoChairman, he has immunity in any event. I think that part of the problem is that Mr. James does not always fully understand some of the words—I am trying to rephrase it for him in a fashion that I thought you intended.

Mr. JAMES. Can you ask me the question again?

Senator MCCAIN. I guess my question is, Mr. James—did you feel this relationship was the only way that you could do business?

Mr. JAMES. Yes.

Senator MCCAIN. Even though you recognized that it was not a legitimate way of doing business?

Mr. JAMES. Yes.

Senator MCCAIN. As counsel has asked you, are you now in a situation where you really don't know what you are going to do next to make a living?

Mr. JAMES. It is hard on the reservation for a contractor or as a carpenter, but after John is all done, I still am going to depend on him to help me contract.

Senator MCCAIN. Mr. Paddock, are you still doing business under the name "Native American Construction?"

Mr. PADDOCK. Yes, sir; we have a job going right now under that name.

Senator MCCAIN. Have any Federal agencies or tribes ever questioned the eligibility of "Native American Construction" for Indian Preference programs?

Mr. PADDOCK. None other than what I testified previously about not being qualified during the Zah administration as a Navajo company.

Senator MCCAIN. Did you believe, when you began your relationship with Mr. James, that you were assisting Mr. James?

Mr. PADDOCK. I felt so, yes.

Senator MCCAIN. Do you still feel that way?

Mr. PADDOCK. I hope that I have. Mr. James and I have become very close. As a matter of fact, I regard him as one of my kids, really.

Senator MCCAIN. Well, from your response I guess that one could ask the question: if he was one of your kids, why didn't you set him up in a business that was consistent with the rules and procedures for Indian Preference?

Mr. PADDOCK. I don't know that I really fully understood the full intent of those rules, and I think that the information that is available to contractors in the specifications—I don't know that it spells those rules out that clearly. I do not think that any of us, whether we are talking about it being our children or whatever, should start them out at the top of the world and say, "Here, you're a contractor," but I tried to help him, I think.

Senator McCAIN. Roughly how much business have you done with the Navajo Nation since you re-initiated your work on the reservation, which I gather from your present testimony coincided with the reelection of Chairman MacDonald?

Mr. PADDOCK. I would guess maybe about $2 million since MacDonald has been in office. If you will recall, as John Paddock Construction, we did work on the reservation even while the Zah administration was in.

Senator McCAIN. Of the $700,000 expended to renovate the Tribal Chairman's Office how much money did you receive?

Mr. PADDOCK. I think in our management contract it ended up being maybe about $140,000.

Senator McCAIN. This is not an easy question to answer, Mr. Paddock, but when these things were happening—the loans, the cars, the airplane, all of these things—didn't this make you uneasy?

Mr. PADDOCK. I would say so, yes. But my idea, and the reason I was glad to see Peter MacDonald run for the office again, besides the fact that we were not certified, was that I felt that the Zah administration was not going out and getting the funding and whatnot necessary to create work, other than HUD work.

Senator McCAIN. Let me ask the question a little differently.

Mr. PADDOCK. OK.

Senator McCAIN. Did you feel that the loans and the plane and the truck and the payment for entertainment was the price for doing business?

Mr. PADDOCK. I think in a way, yes, although I had never done that in the past.

Senator McCAIN. Thank you, and thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Senator McCain.

Mr. Paddock, just to pursue that a little beyond what Senator McCain asked and not to beat you over the head about it, but in your other experience, dealing with the other Native American Housing Authorities, did you get into a position of buying meals or airplane travel or gifts for any officials in those other two housing authorities that you worked with?

Mr. PADDOCK. No, sir.

Senator DECONCINI. When you provided your airplane for Mr. MacDonald and his family, who called you usually? Did the chairman call you?

Mr. PADDOCK. The chairman or his wife.

Senator DECONCINI. And they would just say, "Is your plane available?"

Mr. PADDOCK. Yes, sir.

Senator DECONCINI. And when the loan for $35,000 was made—you testified that at the time, you thought it was truly a loan.

Mr. PADDOCK. Yes, sir; I brought the check to him personally, and he called his wife at their residence. She came down and they both signed the note in front of me.

Senator DECONCINI. Was there any discussion of how he would pay it or any security that would be given—any discussion at all like that?

Mr. PADDOCK. I did not ask him for any security. However, the agreement was that he would pay it in a year.

Senator DeConcini. When that time came on December 1, 1988, did you give him any notice of it or was there ever a discussion about it?

Mr. Paddock. I did not at that time, sir. I was asked by my attorney not to contact him about it, so I did not.

Senator DeConcini. So you have made no effort to try to collect it?

Mr. Paddock. Yes, sir; and we were away from home on December 7, and our office told us that he had called and wanted to talk to me or see me the following Monday or Tuesday.

Senator DeConcini. About what date was that?

Mr. Paddock. December 7. We were out of town and called the office and were told that he had called, and I did not follow up on that.

Senator DeConcini. Who advised you not to follow up, your attorney or our attorneys?

Mr. Paddock. My attorney, yes sir.

Senator DeConcini. Did you receive any other contact from Chairman MacDonald or his representative in the mail, or other phone calls?

Mr. Paddock. No, sir; I have not talked to Chairman MacDonald for a number of months.

Senator DeConcini. During the period of time from when the loan was made and you saw Chairman MacDonald at various times, was the loan ever discussed in any manner?

Mr. Paddock. No, sir.

Senator DeConcini. Including the use of the airplane trips, per the exhibits that have been entered for our purposes here, do you have a general total of how much gratuities, airplane trips, gifts, loans, meals, et cetera, et cetera, that you have put forward on behalf of Chairman MacDonald and some of his family members?

Mr. Paddock. I think it's totalled on the exhibit.

Senator DeConcini. Yes; would you repeat that total for the record, please?

Mr. Paddock. The grand total is $110,795.57.

[See p. 303.]

Senator DeConcini. You believe that to be fairly accurate?

Mr. Paddock. Yes.

Senator DeConcini. Now, when you were in Las Vegas with the MacDonalds and Mr. Brown—you made some reference that you either heard conversations or had general knowledge about the Big Boquillas Ranch. Can you convey to us what information you heard?

Mr. Paddock. Well, it was common knowledge at that time that the tribe had bought the ranch, and it had already come out that Bud Brown was involved in it.

Senator DeConcini. This had already been reported in the newspapers?

Mr. Paddock. Yes, sir; I did not hear any conversations about the ranch while——

Senator DeConcini. Generally you got your information from public media, or wherever it had been reported?

Mr. Paddock. Yes.

Senator **DeConcini**. Not from overhearing a conversation or being told by either Chairman MacDonald or Mr. Brown or anybody associated with them?

Mr. **Paddock**. That's correct, yes.

Senator **DeConcini**. Now, when were you first certified to do business on the Navajo Reservation, do you recall?

Mr. **Paddock**. I believe in about 1980.

Senator **DeConcini**. You were decertified. Do you recall when that happened?

Mr. **Paddock**. In 1982 or 1983. It was right after the Zah——

Senator **DeConcini**. How did that come about? Were you given notice of——

Mr. **Paddock**. Yes; the Navajo Tribe recertifies the contractors on a yearly basis. I think our certification ran out in March, or whatever, for that year. I'm going to say that we were probably decertified in the spring of 1982, I suppose.

Senator **DeConcini**. How did that take place, Mr. Paddock?

Mr. **Paddock**. Simply that they informed us that we weren't going to be renewed.

Senator **DeConcini**. That was in writing?

Mr. **Paddock**. Yes.

Senator **DeConcini**. Did you ask for any explanation?

Mr. **Paddock**. We had a number of conversations with the people in the Navajo Commerce Department about it. They just didn't feel as though we were a proper company to certify, while at the same time there were a good number of other joint ventures——

Senator **DeConcini**. You anticipated my next question.

To your best judgment were there other arrangements such as you had with Mr. James that were operating?

Mr. **Paddock**. Yes.

Senator **DeConcini**. During the period of the Zah administration?

Mr. **Paddock**. Yes, sir.

Senator **DeConcini**. What makes you believe that yours was decertified, or do you have any information?

Mr. **Paddock**. I have no——

Senator **DeConcini**. No reason was given, then, in all your conversations, other than that they didn't think you were qualified, as to why the Native American Construction Company would not qualify under the Indian set-aside?

Mr. **Paddock**. Right.

Senator **DeConcini**. They didn't say why?

Mr. **Paddock**. I don't think so, no.

Senator **DeConcini**. Was there any reference to Mr. James in the course of those conversations as to the reason why Native American was not recertified?

Mr. **Paddock**. I don't think there were any real reasons. Let me say that the Commerce Department sent a representative down to Marana to visit with us and to look at our records and whatnot, and——

Senator **DeConcini**. This was in 1982?

Mr. **Paddock**. Yes, sir; and then shortly after, that we received a letter saying that we would not be recertified. We subsequently had a number of letters, correspondence with them, as well as meetings with the Commerce Department.

Senator DECONCINI. They gave you no reason?

Mr. PADDOCK. Well, I'm certain they had reasons, but I can't tell you exactly what they were because nothing had changed in our organization from what it had been.

Senator DECONCINI. They didn't convey to you that they felt that this company of Native American being owned—did they know it was 100 percent owned by Mr. James?

Mr. PADDOCK. Oh, yes.

Senator DECONCINI. They didn't say that they felt like he was really not the—that it was a shell or that it was unqualified because he was not qualified to run it, although he owned the stock? They gave you no——

Mr. PADDOCK. Oh, they said it was a shell.

Senator DECONCINI. That's what they said?

Mr. PADDOCK. Yes.

Senator DECONCINI. That was the reason they gave?

Mr. PADDOCK. Yes, I would say so.

Senator DECONCINI. Now, when you were recertified, when did that happen? In 1986?

Mr. PADDOCK. Right after Chairman MacDonald was inaugurated.

Senator DECONCINI. How did that happen?

Mr. PADDOCK. We just reapplied and were accepted.

Senator DECONCINI. You reapplied?

Mr. PADDOCK. Yes.

Senator DECONCINI. Did they come down and inspect again?

Mr. PADDOCK. No, sir.

Senator DECONCINI. Did you have to submit anything other than the normal application?

Mr. PADDOCK. Just the normal application.

Senator DECONCINI. And that was similar to what you had submitted before?

Mr. PADDOCK. Yes.

Senator DECONCINI. Another application, and you were recertified?

Mr. PADDOCK. Yes.

Senator DECONCINI. Did Chairman MacDonald ever mention the certification?

Mr. PADDOCK. No.

Senator DECONCINI. Did you ever mention it to him?

Mr. PADDOCK. No; I did not mention it to him, but I think that no doubt some of the people in the Commerce Department knew that I was a friend of the chairman.

Senator DECONCINI. Do you think he knew you had been decertified? Did you ever tell him you had been decertified under Zah?

Mr. PADDOCK. Yes; I think I did.

Senator DECONCINI. So he was aware of your decertification?

Mr. PADDOCK. Certainly. I think so.

Senator DECONCINI. He did not talk to you about the recertification? Is that correct?

Mr. PADDOCK. No, sir.

Senator DECONCINI. He never mentioned it to you, and you never mentioned it to him?

Mr. PADDOCK. Well, we reapplied, and I'm certain that I talked to some of the aides or whatever and mentioned that I was wanting to get recertified. So we subsequently were.

Senator DECONCINI. I have no further questions. Does counsel have any further questions?

Mr. SOLLERS. No, Mr. Chairman.

Senator DECONCINI. Senator McCain, any further questions?

Senator MCCAIN. No, Mr. Chairman.

Senator DECONCINI. Mr. Paddock, thank you for your testimony.

Mr. James, thank you for your testimony.

Counsel, thank you for the assistance on the immunization this morning. We realize these are difficult problems to address and we appreciate your being with us today.

Mr. STUEHRINGER. Thank you, Mr. Chairman.

Senator DECONCINI. We will proceed with the next witnesses, Pat Chee Miller and Franz Springer. If they would please come forward.

[Witnesses sworn.]

Senator DECONCINI. The questioning this morning will begin with Ken Ballen, Chief Counsel for the Special Committee on Investigations.

Would you please identify yourselves for the record?

Mr. OLIPHANT. Yes, Mr. Chairman. My name is Tim Oliphant. This is my partner, Jerry Young, who coincidentally is of Cherokee heritage.

This is Pat Chee Miller, my client, and my other client, Franz Springer.

Senator DECONCINI. Thank you, Mr. Oliphant, for the introduction, and thank you, gentlemen, for being with us.

Mr. Ballen.

Mr. BALLEN. Thank you, Mr. Chairman.

Mr. Miller, what is your relationship to Peter MacDonald?

Mr. OLIPHANT. Mr. Ballen, my client is going to respectfully exercise his rights under the Fifth Amendment.

Mr. BALLEN. Mr. Oliphant, I will ask the chairman to convey to you an order from the District Court of the United States for the District of Columbia conferring immunity at this time.

Mr. Springer, I will pose to you the same question. What is your relationship to Peter MacDonald?

Mr. OLIPHANT. Mr. Ballen, my client, Mr. Springer, respectfully exercises his rights under the Fifth Amendment.

Senator DECONCINI. Mr. Oliphant, I hereby communicate to you two orders issued by the U.S. District Court for the District of Columbia, directed toward your clients, Pat Chee Miller and Franz Springer. The orders provide in substance that your clients may not refuse to provide evidence to the Special Committee on the basis of their privilege against self-incrimination.

It provides that evidence obtained from your clients under these orders may not be used against them in any criminal proceeding. Copies of the orders are at the witness table, and without objection will be placed in the record.

[Immunity orders of the District Court appear in appendix. See pp. 308, 309.]

Senator DeConcini. Pursuant to these orders I direct your clients to answer the questions put to them by Chief Counsel Ballen.

Mr. Miller and Mr. Springer, the immunity procedure is completed and Mr. Ballen will continue.

Mr. Ballen. Thank you very much, Mr. Chairman.

STATEMENT OF PAT CHEE MILLER, PRESIDENT, PC&M CONSTRUCTION CO., INC., ACCOMPANIED BY JAMES OLIPHANT, ESQ., AND JERRY YOUNG, ESQ.

Mr. Ballen. Mr. Miller, what is your business?

Mr. Miller. I'm employed as a general contractor.

Mr. Ballen. And how long have you been employed as a general contractor?

Mr. Miller. Since May 4 of 1979. It will soon be 10 years.

Mr. Ballen. Mr. Miller, is that the construction business that you're in, general contracting?

Mr. Miller. Yes, sir.

Mr. Ballen. And what is the name of your company, sir?

Mr. Miller. The name of my company is PC&M Construction Company.

Mr. Ballen. Before 1979 when your company was formed, sir, what kind of business did you have?

Mr. Miller. I worked for various other employers and agencies, but my main job trade is being a journeyman carpenter.

Mr. Ballen. Very good, sir.

Mr. Miller, are you a member of an Indian tribe?

Mr. Miller. Yes, sir; I'm a member of the Navajo Tribe.

Mr. Ballen. Mr. Miller, in 1980, what did you decide to do?

Mr. Miller. After we had received a general contractor's license in the State of New Mexico, I found it difficult to obtain large construction work because of our lack of bonding.

Mr. Ballen. As a result did you approach Franz Springer?

Mr. Miller. Yes, sir.

Mr. Ballen. Who was Mr. Springer?

Mr. Miller. Mr. Springer was one of the general contractors who resided in the Albuquerque area whom I had contacted.

Mr. Ballen. As a result of contacting Mr. Springer, what occurred?

Mr. Miller. We entered into a limited joint partnership to bid on Navajo preference projects on the Navajo reservation.

Mr. Ballen. Mr. Miller, were there two joint ventures that you bid on and performed work on with Mr. Springer?

Mr. Miller. Yes, sir; the ones that we were the low bid on and got.

Mr. Ballen. Let me ask you this question.

Were there other joint venturers on the Navajo reservation active at the time that you sought out Mr. Springer?

Mr. Miller. Yes, sir; there were two others, at least two others that I remember.

Mr. Ballen. Who were those?

Mr. **MILLER**. One was Chuska/Morrison-Knudsen, and the other one was Luke Johnson and Indian Nation Developers.

Mr. **BALLEN**. And what if anything did you know about these contractors and joint venturers?

Mr. **MILLER**. Without the benefit of a joint venture partner, I had gone to those project sites to seek work as a subcontractor. All I noticed were non-Navajos, and particularly non-Navajo supervisors, working on the job. We couldn't get in as a subcontractor, although I was qualified.

Mr. **BALLEN**. Now, the Navajo general contractor on one of those joint ventures was Larry Manuelito?

Mr. **MILLER**. Yes, sir.

Mr. **BALLEN**. What was his background? Did he have a background in the construction industry like yours?

Mr. **MILLER**. No; I was quite surprised that Larry had received a general contractor's license when in fact he was a school administrator.

Mr. **BALLEN**. Sir, you testified that you entered into two joint ventures with Franz Springer and his company, Franz Springer Construction. Is that correct?

Mr. **MILLER**. Yes, sir.

Mr. **BALLEN**. Now, did the terms of the agreement provide for 55 percent in one instance and 51 percent in another instance of the profits to go to you, but in reality you received less of the profits than that?

Mr. **MILLER**. Yes; that's true.

Mr. **BALLEN**. That was because of provisions for bonding and other administrative fees?

Mr. **MILLER**. Yes, sir.

Mr. **BALLEN**. Now, sir, in 1986 did you renew your relationship with Franz Springer?

Mr. **MILLER**. Yes, sir.

Mr. **BALLEN**. Why did you renew that relationship?

Mr. **MILLER**. We renewed the relationship at my request because we still had not been able to seek larger contracts and get a faithful track record to get bonding.

Mr. **BALLEN**. Sir, on behalf of your company did you enter into a new joint venture agreement with Franz Springer Construction?

Mr. **MILLER**. Yes, sir; in April 1986.

Mr. **BALLEN**. What were the terms of that agreement, Mr. Miller?

Mr. **MILLER**. Basically, the terms of the agreement were that PC&M Construction would have 51 percent controlling interest and also get 51 percent of the profits.

Mr. **BALLEN**. And 49 percent would go to Franz Springer?

Mr. **MILLER**. Yes, sir.

Mr. **BALLEN**. Did that agreement that you entered into actually reflect the true division of profits?

Mr. **MILLER**. No; it did not.

Mr. **BALLEN**. Was there a side or hidden agreement that did?

Mr. **MILLER**. Yes, sir; there was.

Mr. **BALLEN**. I would ask that a facsimile of that be displayed here, please.

Mr. Miller, is that a copy of the side agreement that you entered into with Franz Springer on the true division of profits?

[See pp. 196–197.]

Mr. MILLER. Yes, sir; that is the same copy.

Mr. BALLEN. And is that your signature reflected?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Was this side agreement submitted to Federal or tribal governments?

Mr. MILLER. No, sir.

Mr. BALLEN. What are the terms of the hidden agreement, Mr. Miller?

Mr. MILLER. The terms of the hidden agreement were that I, as president of the joint venture party, delegated all of the powers and obligations to Mr. Franz Springer as my managing partner, and that the term "profit," the net profit, would be developed based on a fee schedule of the contract amount that we might be successful in getting.

Mr. BALLEN. So in effect it transferred control of the joint venture to Mr. Springer? Would that be a fair characterization?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Did this agreement override the official joint agreement that you had submitted to Government agencies?

Mr. MILLER. Yes; to the tribal agency.

Mr. BALLEN. From this period of time in 1986 forward, what were your duties on joint venture projects with Franz Springer Construction?

Mr. MILLER. Being the Indian partner of the joint venture, I sought out and identified Navajo preference jobs that we would bid on the Navajo Reservation. I then solicited contacts with the Navajo subcontractors and suppliers, either by certified letter or by personal contact, and asked everyone to bid with us at least eight hours prior to bid time so that we could organize all the figures.

Mr. BALLEN. Mr. Miller, in effect you performed as liaison in seeking out the Indian preference work and in facilitating subcontracts on that work? Would that be correct?

Mr. MILLER. Yes, sir.

Mr. BALLEN. What projects did you bid on as a joint venture for the Navajo Nation?

Mr. MILLER. Since 1980 we bid and were awarded——

Mr. BALLEN. From 1986 on, when you formed the new agreement, sir.

Mr. MILLER. OK. We bid on the Chinle Shopping Center addition at Chinle, AZ. We also bid and did get the Shiprock Shopping Center addition at Shiprock, NM. We also bid and did get the contract on the Crown Point Shopping Center, which is now 99 percent complete, at Crown Point, NM.

We also bid on the CANDO Office Building at Window Rock, AZ.

Mr. BALLEN. The CANDO Office Building, sir, CANDO is the name of the Navajo Nation's Office of Economic Development?

Mr. MILLER. Yes, sir; it is.

Mr. BALLEN. Do you know what CANDO stands for, the acronym?

Mr. MILLER. It's Commission on Accelerating Navajo Development Opportunities, I believe it is.

Mr. BALLEN. All right.

Now, Mr. Miller, you did receive a letter of intent, but are you still negotiating the lease and there's no final contract on the CANDO Office Building?

Mr. **Miller**. Yes, sir.

Mr. **Ballen**. Now, on that project, the CANDO Office Building project, did Chairman MacDonald say that he wanted you to subcontract with Johnny Donaldson on the CANDO Building?

Mr. **Miller**. Yes, sir.

Mr. **Ballen**. Let me just ask one question for the record to clarify.

All of your work on the joint venture with Franz Springer Construction was Indian preference work, is that correct?

Mr. **Miller**. Yes, sir.

Mr. **Ballen**. Can you give us a total figure of how much money you received in contracts from 1986 forward from the Navajo Nation?

Mr. **Miller**. Probably no more than $4.5 million to date.

Mr. **Ballen**. Sir, have you, with Franz Springer, done any Indian preference work off the Navajo reservation?

Mr. **Miller**. No, sir; none at all.

Mr. **Ballen**. Directing your attention to September, 1986, did Peter MacDonald request money from you?

Mr. **Miller**. Yes, sir.

Mr. **Ballen**. This was before he was elected as tribal chairman in November 1986?

[See p. 312.]

Mr. **Miller**. Yes, sir.

Mr. **Ballen**. How much did he ask you for?

Mr. **Miller**. At a breakfast meeting between me and my partner, Mr. Springer, he asked for some help. We didn't know what to give, so I got a check for $1,000, cashed it, and gave it to Peter MacDonald.

Mr. **Ballen**. Where did you give him the $1,000?

Mr. **Miller**. In Gallup, NM.

Mr. **Ballen**. Did Peter MacDonald tell you what the money was for?

Mr. **Miller**. No; but he told us he was running for chairman and he needed some expense moneys.

Mr. **Ballen**. Now, sir, directing your attention to what has just been placed on the exhibit stand there, is that a copy of the check that was cashed?

Mr. **Miller**. Yes, sir.

Mr. **Ballen**. What was your reason for giving the funds to Peter MacDonald?

Mr. **Miller**. I gave the money to Mr. MacDonald because I felt that he would give us a fairer opportunity to practice our trade on the Navajo reservation.

Mr. **Ballen**. Were you performing work under the previous administration of Peterson Zah?

Mr. **Miller**. Yes; I was at the time.

Mr. **Ballen**. But you felt you would get a fairer shake from Peter MacDonald?

Mr. **Miller**. Yes, sir.

Mr. Ballen. Now, sir, directing your attention to the time after Peter MacDonald was elected chairman of the Navajo Nation in November 1986, and during the time that you were bidding contracts on the Navajo Nation with Franz Springer Construction, did there ever come a time that Peter MacDonald asked you for a payment?

Mr. Miller. Yes, sir; he did.

Mr. Ballen. When did he ask for it?

Mr. Miller. In the summer months of 1988 we had a meeting in his office.

Mr. Ballen. Who was present at that meeting, sir?

Mr. Miller. Just Chairman MacDonald and myself.

Mr. Ballen. You were at his office?

Mr. Miller. Yes, sir.

Mr. Ballen. That would be in Window Rock, AZ?

Mr. Miller. Yes, sir.

Mr. Ballen. What was the conversation? What did he say to you?

Mr. Miller. He said that he needed $4,000 and he wanted me to get him $4,000 right away.

Mr. Ballen. Did he say why he needed the funds?

Mr. Miller. No, sir; he just needed it.

Mr. Ballen. How did you respond, Mr. Miller?

Mr. Miller. I told him, that's a stiff sum of money, that I didn't have any money, that I would have to work on it and try to get back to him in a couple of weeks.

Mr. Ballen. You didn't have that kind of money laying around, did you?

Mr. Miller. No.

Mr. Ballen. Now, at the time that Mr. MacDonald asked you for the $4,000, did you have a bid with the tribal government on the $2.5 million job on the CANDO building?

Mr. Miller. Yes, sir.

Mr. Ballen. Now, after the chairman asked you for the $4,000, what did you do, Mr. Miller?

Mr. Miller. I was embarrassed about it but I went to my partner, Mr. Springer, and told him to cut me a check for $4,000.

Mr. Ballen. What did Mr. Springer say?

Mr. Miller. I went to see him in Albuquerque, at which time he had the cash ready for me to pick up.

Mr. Ballen. Did you tell him who the cash was for?

Mr. Miller. Yes, sir.

Mr. Ballen. Did you tell him any reason why you were requesting the cash for Mr. MacDonald?

Mr. Miller. I did not give him a specific reason why but I told Mr. Springer that I didn't know what it was for. I fabricated a story in that maybe the chairman needed it for prizes. I really didn't know. All I knew was that I had to get $4,000.

Mr. Ballen. Why did you fabricate that story? Why didn't you tell Mr. Springer the truth about the circumstances around why Mr. MacDonald asked for the money?

Mr. Miller. I don't know, just to give him a justification to get $4,000. It was just dumb of me to do that, but that's what happened.

Mr. BALLEN. Sir, what did you do with the $4,000 in cash you received from Mr. Springer—did you cash the check that Mr. Springer gave you?

Mr. MILLER. No; I got it in cash from Mr. Springer.

[See p. 313.]

Mr. BALLEN. All right. He didn't give you a check, then?

Mr. MILLER. No.

Mr. BALLEN. What did you do with the $4,000 in cash?

Mr. MILLER. I had it in my possession about a week or two, and the next time Mr. MacDonald was in Window Rock I went and gave him the money, but only $3,000. I had spent $1,000 of it by that time on some expenses that I had.

Mr. BALLEN. So you had kept $1,000 out of the $4,000 for yourself?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Where did you give Mr. MacDonald the money?

Mr. MILLER. In Window Rock.

Mr. BALLEN. Where in Window Rock?

Mr. MILLER. In front of his house.

Mr. BALLEN. Which house was this, sir? Can you describe it?

Mr. MILLER. It was a house about 1 mile or 2 miles west of Window Rock in a small community called St. Michaels, AZ.

Mr. BALLEN. How did you hand the money to Mr. MacDonald? Was it in an envelope? Was it in a bag? How was the money handed to him?

Mr. MILLER. He got into my truck. I reached into my briefcase and gave him all the $100 bills wrapped with a rubber band. There was no envelope.

Mr. BALLEN. What did he do with them?

Mr. MILLER. He put them in his pocket and said, "Thank you."

Mr. BALLEN. Did he say anything more than thank you?

Mr. MILLER. Nothing. I didn't even know what it was used for.

Mr. BALLEN. Now, Mr. Miller, did you tell him that even though he had asked you for $4,000, that you were only giving him $3,000?

Mr. MILLER. Yes; I said that was all we could spare.

Mr. BALLEN. Did he have any comment about that?

Mr. MILLER. No, sir.

Mr. BALLEN. Did you ever discuss the money with Chairman MacDonald again?

Mr. MILLER. No, sir.

Mr. BALLEN. In the summer of 1988, this same period of time, did Peter MacDonald come and visit your house?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Where is your house located, Mr. Miller?

Mr. MILLER. My family home is located about 4 miles south of Mariano Lake Trading Post in New Mexico.

Mr. BALLEN. Was anyone with Chairman MacDonald when he came to your house?

Mr. MILLER. Mrs. MacDonald was with him, as well as one of his security guards, Mr. Felix Williams, and Mr. Roy Cleveland.

Mr. BALLEN. Sir, who is Mr. Roy Cleveland?

Mr. MILLER. Mr. Cleveland was one of the staff assistants in the chairman's office at the time.

Mr. BALLEN. You say "at the time." Do you know whether or not he is still a staff assistant to Chairman MacDonald?

Mr. MILLER. No, sir; he is no longer employed as a staff assistant.

Mr. BALLEN. Sir, you have a collection of antique cars?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Did Chairman MacDonald accompany you to look at that collection?

Mr. MILLER. Yes, sir.

Mr. BALLEN. What if anything did Mr. MacDonald say when he saw your cars?

Mr. MILLER. When I opened up my little barn for him to see my cars he was very fascinated that these cars were still around on the reservation. He opened the doors, put his hands on the hood, said that they were solid, that they were original. Speaking to himself in Navajo in fascination he said he wished he had one; if he had one he would work on it as his hobby when he wasn't working.

Mr. BALLEN. And this was a conversation you had with him in Navajo?

Mr. MILLER. Yes, sir; this was all a statement to himself, but we were there looking and listening. And some of the other staff people were looking at the different cars I had.

Mr. BALLEN. Mr. Miller, were the other conversations about the cash that Chairman MacDonald had requested from you in Navajo, too, or were they in English?

Mr. MILLER. Those were in Navajo, too.

Mr. BALLEN. Sir, based on the statement made by Chairman MacDonald on the cars, what did you decide to do?

Mr. MILLER. Well, being a car buff, I decided maybe it was a good idea to get a car, maybe buy it for him, and give it to him.

Mr. BALLEN. And did you have a conversation with Roy Cleveland about getting Chairman MacDonald one of these antique cars?

Mr. MILLER. Yes; I did.

Mr. BALLEN. What did Mr. Cleveland say?

Mr. MILLER. Mr. Cleveland said it might be a nice idea for the chairman to have a car to ride in parades or different things.

Mr. BALLEN. Did you look for a car for Chairman MacDonald?

Mr. MILLER. Yes; I receive a lot of magazines and publications, and I noticed an ad running in one of the local papers, and I found a car.

Mr. BALLEN. How did you obtain the funds to purchase the car?

Mr. MILLER. We received the money through my partner, Mr. Springer.

Mr. BALLEN. Did you go to Mr. Springer again to get the funds?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Did you tell him the purpose of the funds?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Did you subsequently purchase the car with a cashed check to Mr. Roy Cleveland that came from Franz Springer?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Mr. Miller, I have placed a check there. Is that the check that was cashed for purchase of the car?

[See p. 314.]

Mr. MILLER. Yes, sir; it is.

Mr. **Ballen**. Now, did you subsequently tell Peter MacDonald that you bought the car for him?

Mr. **Miller**. I mentioned it to him and I showed the car to him.

Mr. **Ballen**. And how did Peter MacDonald respond?

Mr. **Miller**. Well, he was surprised that we did get a car. He only drove it for about 3 or 4 minutes on a test ride. I wanted to keep it and get all the other mechanical problems fixed on it before we could give it to him.

Mr. **Ballen**. You paid $5,500 for the car, is that correct?

Mr. **Miller**. Yes, sir.

Mr. **Ballen**. You say he was surprised by the car. Was this a surprise of anger or shock, or pleased? How did he react?

Mr. **Miller**. He was visibly pleased, although it was only a reproduction or just a false model of a Model A.

Mr. **Ballen**. It wasn't a real Model A?

Mr. **Miller**. It wasn't a real Model A, no.

Mr. **Ballen**. That would have cost you a lot more?

Mr. **Miller**. Yes, sir.

Mr. **Ballen**. Did you subsequently transfer this car to Peter MacDonald?

Mr. **Miller**. No, sir.

Mr. **Ballen**. Why not?

Mr. **Miller**. Well, all in this period of time, 4 to 5 days after we purchased the car, an FBI agent was asking my partner, Mr. Springer, about the car. I decided that maybe it's not a good idea to do this. I still have the title in Gallup.

Mr. **Ballen**. Who is the FBI agent who was asking about it?

Mr. **Miller**. Apparently, Mr. Springer was contacted by Agent Elroy.

Mr. **Ballen**. Now, did you tell Peter MacDonald why you didn't transfer the car to him?

Mr. **Miller**. Yes, sir.

Mr. **Ballen**. What did you say to Peter MacDonald?

Mr. **Miller**. He was shocked——

Mr. **Ballen**. No; let me ask you the question again, Mr. Miller. What did you say to Peter MacDonald?

Mr. **Miller**. I told him that for some unknown reason, the FBI knows about the car, and I'd better not give it at this time.

Mr. **Ballen**. And how did Peter MacDonald respond to that?

Mr. **Miller**. He was shocked. He said, "What do you mean?" I told him that we just couldn't give him the car.

Mr. **Ballen**. Now, Mr. Miller, do you know of another $5,000 in cash requested by Roy Cleveland for Peter MacDonald in July 1988?

Mr. **Miller**. I'm aware, but only about 4 to 5 weeks after it happened.

Mr. **Ballen**. Did Mr. Cleveland tell you that he had asked Franz Springer for $5,000 from Peter MacDonald?

Mr. **Miller**. Yes; I heard it first from Roy, then Mr. Franz Springer confirmed it to me.

Mr. **Ballen**. Was this $5,000 payment made to Roy Cleveland, to the best of your knowledge?

Mr. **Miller**. To the best of my knowledge, yes, sir.

[See p. 315.]

Mr. BALLEN. Was this payment also made while you and Franz Springer were bidding on the CANDO tribal project?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Now, in additon to these gifts and payments totalling approximately $10,000, did you make other small gifts and donations to various tribal affairs and offices?

Mr. MILLER. Yes, sir; my partner and I paid for limousine services during the inauguration. We paid for trophy saddles, flowers, shawls, luggage sets for various prizes during the Navajo Nation Fair. We just did that as part of advertising.

Mr. BALLEN. You paid for some beef for a celebration?

Mr. MILLER. Yes; my company, PC&M Construction, gave $1,000 to pay for barbequed beef. Mr. Springer did the same, as well as numerous other companies.

Mr. BALLEN. Was this a celebration of 1 year in office for Peter MacDonald?

Mr. MILLER. Yes, sir.

Mr. BALLEN. When did that celebration occur?

Mr. MILLER. The early part of February 1988 or January 1988.

Mr. BALLEN. And he was inaugurated in January 1987 as tribal chairman?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Elected in November 1986?

Mr. MILLER. Yes, sir.

It shows the check here to be January 21, 1988.

[See p. 316.]

Mr. BALLEN. Mr. Miller, is it fair to say that you had to honor Peter MacDonald's requests for cash if you wished to do business on the reservation?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Was there a choice for you in this matter if you wished to continue to do business?

Mr. MILLER. Well, it's just one of those things—in my culture, when an elder asks you for help—I didn't see any problem with the $3,000 or $4,000 at the outset. That's the first time he ever asked me in an official capacity, and I thought it was just a small favor. I didn't realize it was going to get this large.

Mr. BALLEN. Mr. Miller, could you tell the members of the committee what your feelings are about the experiences that you're going through here, both with regard to Chairman MacDonald and with regard to your contracting?

Mr. MILLER. Yes; I appreciate the opportunity.

I've given you my name as Pat Chee Miller. I was born March 24, 1945, on the Zuni Indian Reservation. I am of the People by the Water's Edge Clan in the Navajo Tribe, and my permanent family home is 4½ miles south of Mariano Lake, NM.

I was raised in a very rural area of the present-day Chichiltah Chapter, 25 miles south of Gallup, NM. I was raised by my late grandparents, who never learned to speak or write English, in a very traditional Navajo-speaking lifestyle, with no running water, no electricity, dirt floor, and our mud-log hogans and simple brush arbors during the summer.

Mostly I herded sheep and tended dry-land farming lots and took care of the family livestock. My late grandmother was a medicine woman and a trader of things, covering a large portion of the Navajo Reservation. She taught me to improvise and have respect for others, helping others when in need, and most of all sharing the gift of clan association unto others.

It is our tradition to return at least a piece of a prepared meal back to the fire so that our work and life's rewards can be perpetual.

In June 1963 I was indentured as an apprentice carpenter with a starting pay of $1.25 an hour. Since May 4, 1979, I have eventually incorporated the only Navajo-owned general contracting business which has a license in residential, commercial, and heavy-duty work in the States of Arizona and New Mexico.

As a part of developing PC&M into a major contractor role on the Navajo Reservation I have tied into a limited joint venture situation with Franz Springer of Albuquerque, NM. Prior to my association with Mr. Springer, PC&M was unable to obtain bonding on large contracts and we were unable to get any positive leads to the sureties or to the bonding companies that issued these bonds.

Everyone in the bond market shied away from me because of our reservation status. I couldn't even buy a bond agent to issue a performance bond when our cash in the bank exceeded the proposed contract value. Since then, in our association, we are able to receive bonds. Now we are able to hire Navajo craftsmen and Navajo subcontractors and utilize the Navajo subcontractors that we have on the reservation.

Personally, I feel that I've made it work.

Mr. BALLEN. Mr. Miller, let me ask you this question. Without Franz Springer's help, what you're saying is you could not have gotten the bonding necessary to do the work that you have done?

Mr. MILLER. That is true.

Mr. BALLEN. Mr. Miller, you testified as to your feelings in the bonding area. You testified before that you were embarrassed by Chairman MacDonald's request for funds. Why were you embarrassed? Did you feel compromised?

Mr. MILLER. Yes; a man of his stature, you would think that $4,000 shouldn't be a whole lot of problem to get on his own.

Mr. BALLEN. But instead he got it from you while you were bidding work on the reservation?

Mr. MILLER. Yes, sir.

Mr. BALLEN. Thank you, Mr. Chairman.

STATEMENT OF FRANZ ALBERT SPRINGER, PRESIDENT, SPRINGER CONSTRUCTION CO., ACCOMPANIED BY JAMES OLIPHANT, ESQ., AND JERRY YOUNG, ESQ.

Mr. SOLLERS. Make sure that we have your full name for the record first.

Mr. SOLLERS. Franz Albert Springer.

Mr. SOLLERS. Mr. Springer, you are testifying here pursuant to immunity, correct?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Where do you live, sir?

Mr. SPRINGER. In Albuquerque, NM.

Mr. SOLLERS. What's your address?

Mr. SPRINGER. I live at 7629 Arroyo del Oso, Northeast.

Mr. SOLLERS. How are you employed?

Mr. SPRINGER. I am self-employed as a general contractor.

Mr. SOLLERS. What is the name of your company?

Mr. SPRINGER. Springer Construction Company.

Mr. SOLLERS. Where is Springer Construction?

Mr. SPRINGER. It's in Albuquerque also, at 2415 Princeton, Northeast, Albuquerque.

Mr. SOLLERS. Now, Mr. Springer, you've listened to the testimony from Mr. Miller. You've heard about his characterization of the relationship.

Why, in your mind, was the joint venture between Springer and PC&M formed?

Mr. SPRINGER. Well, to take advantage of the Indian preference law that had recently been enacted.

Mr. SOLLERS. You had obtained work previously on the Navajo reservation, had you not?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. With the advent of Indian preference did you and Springer Construction need a vehicle which would allow you to obtain Indian Preference work on the reservation?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. What was the percentage of Indian work that Springer Construction did or performed prior to its relationship with PC&M?

Mr. SPRINGER. Oh, perhaps 10 percent.

Mr. SOLLERS. How about after the relationship was formed?

Mr. SPRINGER. Of course, we had to bid several jobs, but we were successful and the volume appreciated to maybe 40 percent.

Mr. SOLLERS. Now, you were aligned with Mr. Miller from 1980 to sometime in 1983, I believe the testimony was, and then the relationship broke off for a period of time. Why did it break off?

Mr. SPRINGER. The first job we got was the demolition and repair of a high school that had burned at Fort Defiance, and Pat took on the subcontractor role for the masonry. That was fine; that was a fairly small amount of work. Then the next project we got was the 100 units of housing at Ojo Amarillo, which was a HUD project, and Mr. Miller wanted to take on all the concrete foundations and slab work and exterior concrete, which I ran up to over $300,000, and I felt very vulnerable in permitting him to do this.

Mr. SOLLERS. Why did you feel vulnerable having Pat Chee Miller perform a substantial amount of subcontracting work on the job?

Mr. SPRINGER. A contractor's relation with a subcontractor is very tenuous. There are a number of features about any subcontract that give the general contractor an opportunity to amplify the work force of the subcontractor if he's not working fast enough or if his work is not good, to discharge him, to take over the work.

When you take a subcontract like that, you can see the potential for terrific conflict there. I felt very vulnerable about it.

Mr. SOLLERS. Let me see if I understand you. You had a joint venture agreement with Mr. Miller in which Mr. Miller was supposed to be 51 percent of the joint venture and you were supposed to be 49 percent, is that correct?

Mr. Springer. Yes, sir.

Mr. Sollers. However, you were concerned that Mr. Miller perform a substantial amount of work on the job, is that correct?

Mr. Springer. Yes, sir.

Mr. Sollers. Were you also concerned about subjecting yourself to jurisdiction of tribal courts?

Mr. Springer. Yes, sir; that was in the joint venture agreement. Most joint venture agreements have an arbitration clause, but this one—they also require in addition—I believe it reads that the arbitration would take place in the tribal courts, or there was a separate paragraph that said that any conflicts would be handled by the Navajo courts.

Mr. Sollers. The question is, did that concern you?

Mr. Springer. Yes, sir.

Mr. Sollers. Did you obtain bonding on all the projects which were joint ventures between PC&M and Springer?

Mr. Springer. Yes, sir.

Mr. Sollers. Was bonding a problem for a small Indian-owned company on the reservation?

Mr. Springer. Yes, sir; I don't know of any of them that can bond.

Mr. Sollers. Now, you heard the testimony concerning the silent agreement, which is still upon the easel. Why did that agreement come about?

Mr. Springer. Well, Pat and I had split up in about 1983, and about April 1985, we wanted to renew our partnership. But at that time the Navajo Commerce Department had begun to insert very restrictive clauses in our joint venture agreement in favor of the Navajo partner.

Mr. Sollers. Were you concerned that you were receiving inquiries from the tribe about the nature of your relationship with Mr. Miller?

Mr. Springer. Well, the Commerce Department officials certainly wanted to see a copy of our agreement, and they insisted on certain changes restricting my authority and giving it more from the paleface to the Navajo.

Mr. Sollers. So the joint venture agreement was altered to meet those needs and the silent agreement was developed, is that correct?

Mr. Springer. Well, the last request that the Commerce Department had of us was to make the management of the joint venture 100 percent in the domain or the purview of the Indian partner, which of course was completely unacceptable to me. As we walked away from that meeting I told Pat that there was no way I could sign that or continue.

Mr. Sollers. Well, all through the relationship with Mr. Miller you always insisted upon maintaining control of the relationship, is that not true?

Mr. Springer. Yes, sir.

Mr. Sollers. That side agreement was never submitted to the Navajo Tribe, was it?

Mr. Springer. No; it wasn't.

Mr. Sollers. Nor was it submitted to HUD nor any other Federal agency, was it?

Mr. SPRINGER. No; it wasn't.

Mr. SOLLERS. Just your joint venture agreement was submitted to those authorities, is that true?

Mr. SPRINGER. Correct.

Mr. SOLLERS. That joint venture agreement did not set forth the true nature of your relationship with Mr. Miller, did it?

Mr. SPRINGER. Correct.

Mr. SOLLERS. After the silent agreement in 1986 did Mr. Miller act as a subcontractor on any of the jobs that you obtained with him?

Mr. SPRINGER. No, sir.

Mr. SOLLERS. Why not?

Mr. SPRINGER. By that time he was doing quite a bit of work on his own and said he wouldn't have time.

Mr. SOLLERS. You also were concerned, as you previously testified, about whether or not he would be actually doing a substantial amount of subcontract work on the job? Is that true?

Mr. SPRINGER. Well, as long as it wasn't too ambitious or too large, no, sir.

Mr. SOLLERS. But indeed he performed no actual contracting work on any of the jobs bid after 1986, is that correct?

Mr. SPRINGER. Correct.

Mr. SOLLERS. And I take it that Mr. Miller's job primarily was to qualify the joint venture for Indian preference and to provide liaison work with the tribe, is that true?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. There were no joint ventures with Mr. Miller on any non-Indian work, is that also correct?

Mr. SPRINGER. Correct.

Mr. SOLLERS. Is there a substantial amount of fronting in Indian Preference work based on your experience?

Mr. SPRINGER. There seems to be.

Mr. SOLLERS. Now, you heard Mr. Miller's testimony with regard to payments to Peter MacDonald. Did you and Springer Construction fund $1,000 in campaign contributions to Peter MacDonald in 1986?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. And did Springer Construction take that as a business expense?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Did you also provide $4,000 which you believed to be for Peter MacDonald in July of 1988?

Mr. SPRINGER. Yes.

Mr. SOLLERS. Did you subsequently learn that only $3,000 of that $4,000 had made it to Peter MacDonald?

Mr. SPRINGER. Yes.

Mr. SOLLERS. On the easel appears a copy of a check which appears to have your signature on it. Is that a check that you wrote from Springer Construction to cash?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. What happened after you wrote that check? Did you cash it?

Mr. SPRINGER. Yes; we cashed it and gave the money to Pat Miller.

Mr. SOLLERS. You gave him $4,000 in cash, is that correct?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Did you take that as a business expense?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Did you also write a check for $5,500 for an antique car for Peter MacDonald?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. To whom did you write that check?

Mr. SPRINGER. Roy Cleveland.

Mr. SOLLERS. You wrote that to Roy Cleveland?

Mr. SPRINGER. Yes, sir; Roy Cleveland.

Mr. SOLLERS. Was that taken as a business expense?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Did you learn that the car was not transferred?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Why wasn't it transferred?

Mr. SPRINGER. It seemed inadvisable at the time.

Mr. SOLLERS. Were you visited by Special Agent James Elroy of the Federal Bureau of Investigation concerning the car?

Mr. SPRINGER. He came into the office one day when I wasn't there and he spoke to my son, but I knew he was there or had been there.

Mr. SOLLERS. I take it that visit played a role in your decision not to transfer the car to Peter MacDonald, is that true?

Mr. SPRINGER. Yes, sir; that's right.

Mr. SOLLERS. Was there another $5,000 check made out to Roy Cleveland in July, 1988?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Did you subsequently learn that that money had made its way to Chairman MacDonald?

Mr. SPRINGER. Yes.

Mr. SOLLERS. Did you also donate $1,000 to the celebration of the 1-year MacDonald regime?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Now, with regard to the $5,000 check we just spoke about a moment ago, did you take that as a business expense?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. How about the $1,000 to the celebration?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. How about $250 for limousine services for the inauguration of Peter MacDonald?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Was that taken as a business expense?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. How about $560 for a campaign contribution or to fund some sort of campaign flyers in 1986 for Peter MacDonald? Was that taken as a business expense?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Mr. Springer, are you aware that Peter MacDonald exerts a substantial amount of influence on the Navajo reservation?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Is it important to you as a contractor to be in good favor with Chairman MacDonald?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. If you are out of favor on the reservation, can it make things more difficult for you as an outside contractor?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Your financial statements were supplied to the Navajo Nation, were they not?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Did that make it difficult for you to turn down a request from the chairman?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. You had a substantial contract pending in the summer of 1988, did you not?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. And it was in your interest, was it not, to comply with the various requests from the chairman during that summer of 1988?

Mr. SPRINGER. Yes, sir.

Mr. SOLLERS. Mr. Springer, if there was a Federal law prohibiting such payments, would you have made them?

Mr. SPRINGER. No, sir.

Mr. SOLLERS. Mr. Chairman, I have no further questions.

Senator DECONCINI. Thank you, counsel.

Mr. Springer, did you know there was no Federal law by giving Mr. Cleveland $5,000?

Mr. SPRINGER. I know that it's illegal to contribute money to a presidential campaign, but it's okay to contribute it to the mayoral race or the gubernatorial race——

Senator DECONCINI. Or the chairman's race?

Mr. SPRINGER. I didn't know where the chairman fitted into the picture, really, sir.

Senator DECONCINI. Mr. Cleveland came and he talked to you about a $5,000 contribution?

Mr. SPRINGER. He called me on the phone.

Senator DECONCINI. He called you on the phone? What did he say to you?

Mr. SPRINGER. He said that they were getting some adverse publicity on the reservation from the people who weren't in power and they wanted to hire some radio time to counter the bad press they were getting.

Senator DECONCINI. Did he ask you for the specific amount?

Mr. SPRINGER. Yes, sir.

Senator DECONCINI. You wrote him a check. Did you hand-deliver it to him?

Mr. SPRINGER. He came into town a couple days later and I had the cash in my hand. I gave him the cash there at the office.

Senator DECONCINI. At any time did you think there was any law relating to this?

Mr. SPRINGER. No, sir, I didn't think of it. I thought of it like a campaign contribution.

Senator DECONCINI. You thought the same about the $5,500 you wrote to him for the car?

Mr. SPRINGER. Well, it kind of falls into the area of a gift. You have to understand that for the years previous to Mr. MacDonald getting into power there were virtually no contracts being awarded on the reservation, nothing to bid on. I believed in his campaign, his philosophy of bringing industry on the reservation. Of course, I wanted to see a business climate that was helpful to me and to Mr. Miller continue.

Senator DeConcini. Well, to answer my question, when you wrote the $5,500 check to Mr. Cleveland, what was in your mind then? Was that a campaign contribution? What did you think it was for? Did you know it was for an automobile to be given to the Chairman MacDonald?

Mr. Springer. Oh, yes, sir; I knew it was for a car.

Senator DeConcini. What did you think that was for? For campaign purposes? Or did you think it was for a gift, like giving him a ham at Christmas, or what?

Mr. Springer. Well, something in that area.

Senator DeConcini. When you say "something in that area," you thought it was a gift?

Mr. Springer. I would say it was more of a gift or something like the trappings of the office.

Senator DeConcini. Trappings of the office?

Mr. Springer. Yes, sir.

Senator DeConcini. Did you believe that that would influence Chairman MacDonald favorably toward your contracting on the reservation?

Mr. Springer. Yes, sir.

Senator DeConcini. When you gave Mr. Miller the $4,000 in cash, do you substantiate his testimony that he told you it was for Chairman MacDonald, or for some raffle tickets or something along that line that Chairman MacDonald needed the money for?

Mr. Springer. The explanation was that there was a tribal arts and crafts contest that was going on and they needed some money for prizes or publicity.

Senator DeConcini. Did he tell you the money was to go to the chairman?

Mr. Springer. Well, I assumed that the chairman being very influential, it would certainly be something he would know about.

Senator DeConcini. Well, did Mr. Miller indicate to you that he needed $4,000 for the chairman in order to buy some prizes or something? Did he say "for the chairman"? Or had the chairman asked him for the money? Or did he just come in and say, "I need $4,000 for prize money"?

Mr. Springer. I don't remember the exact conversation but there wasn't any question in my mind that it was something that the chairman wanted.

Senator DeConcini. Something the chairman wanted. So you knew that the request was from Chairman MacDonald?

Mr. Springer. Yes, sir.

Senator DeConcini. And when you gave that money you gave it on the basis that this would favorably influence Chairman MacDonald and that would help you do business on the reservation?

Mr. Springer. Yes, sir; I would say.

Senator DeConcini. Now, Mr. Miller, you said that you are the only licensed general contractor on the reservation for commercial and residential purposes? Is that correct?

Mr. Miller. Yes, sir; for the past 10 years.

Senator DECONCINI. For the past 10 years. Is that still the case today?

Mr. MILLER. Yes, sir.

Senator DECONCINI. Before you made arrangements with Mr. Springer, what was the volume of your contracting? Can you give us 1 year?

Mr. MILLER. Yes, sir; as a sole proprietorship in 1979, PC&M Construction did less than $200,000 worth of contract work, mainly custom homes and small residential-type work. We didn't even know the tribe had Navajo preference work——

Senator DECONCINI. At that time?

Mr. MILLER. At that time.

Senator DECONCINI. Now, when you bid on the Chinle Shopping Center, these other shopping centers, and eventually the CANDO building, were all of those shopping centers tribal enterprises? Or were those private developers?

Mr. MILLER. The Chinle is a co-op development by the—they call it Tseaii, but it's easier to say Chinle for the benefit of the committee. It's a co-op group using the consortium of State and Federal and tribal funds to operate a shopping center in Chinle.

Senator DECONCINI. Well, did you make the bid to this co-op?

Mr. MILLER. Yes, sir.

Senator DECONCINI. And they awarded you the bid?

Mr. MILLER. Yes, sir.

Senator DECONCINI. And did they apply the Indian Preference standards and proof?

Mr. MILLER. Yes, sir.

Senator DECONCINI. Now, when you qualified for licensing for Indian contracts—let me ask you this first. Did you qualify for any Indian contracts, either from the BIA or any other Federal agency, before you had your relationship with Mr. Springer?

Mr. MILLER. We were qualified as an Indian-owned firm, 100 percent——

Senator DECONCINI. You were certified?

Mr. MILLER [continuing]. But we didn't have any bonding capacity.

Senator DECONCINI. So you couldn't get the jobs?

Mr. MILLER. We couldn't even bid on the jobs. They would throw our bid right out.

Senator DECONCINI. And how did you get certified?

Mr. MILLER. We have been certified ever since we started our own business, but it took us about 6 years to get our own bonding ability in excess of $300,000.

Senator DECONCINI. But your certification for Indian set-aside with the tribe—let's take that. How was that accomplished?

Mr. MILLER. We bid on our first job in 1980 for a senior citizens' center on the reservation.

Senator DECONCINI. Did you have to get certified in 1980?

Mr. MILLER. Yes, sir.

Senator DECONCINI. In doing that, what did you do? Did you just fill out a form and send it in?

Mr. MILLER. Yes, sir; we filled out a form and sent it in. This particular tribal job did not require a performance bond, so we were able to bid that job.

Senator DECONCINI. Were you also qualified or certified for contracts with the BIA or HUD or any other Federal agency?

Mr. MILLER. Only in the past 4 years.

Senator DECONCINI. Only in the past 4 years, since you've had the relationship with Mr. Springer?

Mr. MILLER. Yes, sir.

Senator DECONCINI. When you submitted your certification for that, can you tell us what procedure that was? Just filling out a form, or exactly what did you do?

Mr. MILLER. Well, the Bureau of Indian Affairs has a very complex form stating everything from your birthdate to the amount of contracts that you have completed thus far, naming your bonding agents, getting your financial track record submitted to them, giving them names and telephone numbers and contract amounts of all previous construction work that we had done on our own or through joint ventures——

Senator DECONCINI. And was there any review of your records or interview for certification?

Mr. MILLER. Yes, sir; they interviewed me at the Gallup area office.

Senator DECONCINI. They did interview you?

Mr. MILLER. Yes.

Senator DECONCINI. And did you sign a statement saying that you were the sole owner and that you were a Native American?

Mr. MILLER. Yes, sir; under the name of PC&M Construction.

Senator DECONCINI. PC&M Construction.

Mr. Miller, has it been your experience in working on the reservation that in order to get contracts, either by yourself or with the joint venture that you had, if you wanted contracts with the tribal council or the tribal authorities or the housing authorities or the co-ops, that you had to perform certain favors for certain people? Was that a standard or was it exceptional when you got involved with the requests from Chairman MacDonald?

Mr. MILLER. It became exceptional in 1988.

Senator DECONCINI. It became exceptional?

Mr. MILLER. Yes.

Senator DECONCINI. Before that you weren't asked to contribute?

Mr. MILLER. Only meals or—we furnished live mutton for ground openings or we bought shovels, expenses that were routinely expected in the nature of an open house or trying to break ground for a new building project. It was just public-oriented or media-oriented stuff that we'd done a lot of, but never this money.

Senator DECONCINI. I have no further questions.

Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Springer, where do you live?

Mr. SPRINGER. In Albuquerque.

Senator MCCAIN. Have you ever been charged with a crime?

Mr. SPRINGER. No, sir.

Senator MCCAIN. How long have you been in the construction business?

Mr. SPRINGER. Well, in 1974 I had been working for another major contractor for 16 years. That's back to about 1959 or so.

Then I started my own company in 1974, so I've had roughly 30 years in this business one way or the other.

Senator McCain. Did you know Mr. Paddock?

Mr. Springer. I just know of him. I haven't met him.

Senator McCain. Do you know of his reputation?

Mr. Springer. He's a contractor who is a competitor. That's all I know.

Senator McCain. But he has a good reputation, as far as you know?

Mr. Springer. Well, he continued to bid on the reservation, which indicates that he continues to have the bonding capacity and the wherewithal and the certification under the Indian Preference law.

Senator McCain. When you signed the silent side agreement with Mr. Miller, you clearly knew that was deceptive?

Mr. Springer. That's true, sir.

Senator McCain. But you felt you had to have the agreement in order to run a profitable business?

Mr. Springer. No, I think the—of course, we like to make a profit, but I felt like the Indian Preference law—Pat and I had worked together earlier. I knew that by this deception we would be able to renew our arrangement and perform, if not to the letter, at least to the intent of the Indian Preference law.

Senator McCain. Have you ever signed any other silent side agreements with other native Americans?

Mr. Springer. No, sir.

Senator McCain. I guess I have just one more question, which is very similar to the one I asked the last witness.

These payments, the automobile, and the prospect of turning over an automobile and a few thousand dollars here and there, did it make you uneasy?

Mr. Springer. Well, the amounts weren't too substantial. Of course, a dollar is a violation of the law, but it was something that I felt was expected on the reservation.

Senator McCain. In other words, you thought it was the price of doing business?

Mr. Springer. I would say so, yes, sir.

Senator McCain. Thank you very much, Mr. Chairman.

Senator DeConcini. Mr. Springer, just to continue on that line, not to belabor it, but Senator McCain said you thought it was the price of doing business. In essence are you saying that if you had not come forward with the funds which Mr. Cleveland or Mr. Miller asked you to come forward with, you thought you would not get the contracts? Is that right?

Mr. Springer. Yes.

Senator DeConcini. Is that what was going through your mind?

Mr. Springer. Yes, sir.

Senator DeConcini. You felt that because you were contributing to something that either went directly to the chairman or for his benefit or at his request, that that would help you?

Mr. Springer. Yes, sir.

Senator DeConcini. Is that the bottom line?

Mr. Springer. Yes, sir.

Senator DECONCINI. Now, you do a lot of work off the reservation?

Mr. SPRINGER. Quite a bit, yes, sir.

Senator DECONCINI. Do you have any similar experiences like that?

Mr. SPRINGER. No, sir.

Senator DECONCINI. If someone came to you from some organization that you had a contract with and asked you for $5,000 for radio advertising for the person that you had the contract with, would you be apt to give it to them, in a hypothetical case?

Mr. SPRINGER. I don't believe so, sir. No, sir.

Senator DECONCINI. Did you ever expect to get paid back for any of these amounts of money?

Mr. SPRINGER. No; sir.

Senator DECONCINI. Does counsel have any further questions?

Mr. SOLLERS. No, thank you, Mr. Chairman.

Senator DECONCINI. Mr. Miller, thank you for your testimony this morning, and Mr. Springer, thank you for your testimony, and counsel, for your cooperation.

[Exhibits connected with the testimony of Mr. Miller and Mr. Springer appear in appendix.]

Senator DECONCINI. The committee will stand in recess now until 2 p.m. today.

[Whereupon, at 12:20 p.m., the committee was recessed, to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION—2:09 P.M.

Senator DECONCINI. The subcommittee will come to order.

This afternoon we're going to hear the testimony of Larry Ward, President of Inbanco Corporation. Am I correct?

Mr. WARD. Inbanco.

Senator DECONCINI. Inbanco Corporation, and John Donaldson, and you're Mr. Ward?

Mr. WARD. Yes, sir.

Senator DECONCINI. You sir, are?

Mr. CROXEN. My name is Boyd Croxen. I'm general counsel of Inbanco Corporation.

Senator DECONCINI. Of Inbanco, and for Mr. Ward?

Mr. CROXEN. Yes.

Senator DECONCINI. Fine.

Mr. Ward, would you please stand to be sworn?

[Witness sworn.]

Senator DECONCINI. State your name and your address for the record, please.

Mr. WARD. My name is Larry Ward. My address is 3186 East Stella Lane, Phoenix, AZ.

Senator DECONCINI. Thank you, Mr. Ward.

I'll turn over the questions to Mr. Sollers.

STATEMENT OF LARRY BRYON WARD, PRESIDENT, INBANCO CORP., ACCOMPANIED BY BOYD CROXEN, ESQ., GENERAL COUNSEL, INBANCO CORP.

Mr. SOLLERS. Good afternoon, Mr. Ward.

Mr. **Ward**. Good afternoon, Mr. Sollers.

Mr. **Sollers**. Mr. Croxen.

Mr. **Croxen**. Good afternoon, Mr. Sollers.

Mr. **Sollers**. Please state your full name for the record.

Mr. **Ward**. Larry Bryon Ward.

Mr. **Sollers**. Where do you live, Mr. Ward?

Mr. **Ward**. 3186 East Stella Lane, Phoenix, AZ.

Mr. **Sollers**. How are you employed?

Mr. **Ward**. I'm the president of Inbanco Corporation.

Mr. **Sollers**. Where is Inbanco based?

Mr. **Ward**. Phoenix, AZ.

Mr. **Sollers**. What is the business of Inbanco?

Mr. **Ward**. Inbanco is the general insurance agency, and it's also the holding company for two wholly owned subsidiary operations in the State of Arizona and Hawaii.

Mr. **Sollers**. How long have you been in the insurance business?

Mr. **Ward**. Since 1967.

Mr. **Sollers**. Now, have you had a substantial experience working on the Navajo Reservation?

Mr. **Ward**. Yes, sir; I have.

Mr. **Sollers**. You've worked on the Navajo Reservation for how long?

Mr. **Ward**. Since 1967, with an interim period when I was an Army officer.

Mr. **Sollers**. When you were first on the reservation, who was the chairman?

Mr. **Ward**. Raymond Nakai.

Mr. **Sollers**. What was your original job on the reservation?

Mr. **Ward**. My original job on the reservation was the implementation and the administration of a new benefits program for the Navajo Nation.

Mr. **Sollers**. Did you stay on during the first three Peter MacDonald terms?

Mr. **Ward**. Yes, sir; I did.

Mr. **Sollers**. Was that between 1970 and 1982?

Mr. **Ward**. Yes, sir; with a 2-year interim when I was in the U.S. Military.

Mr. **Sollers**. Did you become good friends with Peter MacDonald?

Mr. **Ward**. Yes, sir; I did.

Mr. **Sollers**. What's the nature of your relationship?

Mr. **Ward**. I consider him a personal friend.

Mr. **Sollers**. Are you all golfing buddies?

Mr. **Ward**. Very seldom. I'm not a very good golfer. [Laughter.]

Mr. **Sollers**. Do you frequently have dinner together?

Mr. **Ward**. Yes, sir.

Mr. **Sollers**. Now, what did you do on the reservation during the first 12 years of the MacDonald regime?

Mr. **Ward**. Administered the Tribal Benefits Insurance Program that consisted of things like billings, premium collection, claims administration, enrollments, changes, everything that had to do with the employee benefits program. We had a staff of 15 Navajos to support it.

Mr. Sollers. What happened to your business when Peterson Zah was elected?

Mr. Ward. It continued on for approximately 1 year, and then our relationship was terminated.

Mr. Sollers. Do you know why it was terminated?

Mr. Ward. I can give you a subjective opinion.

Mr. Sollers. What's your subjective opinion?

Mr. Ward. It goes with the political winds. The same things that happen in Washington, a new administration comes in, they decide to bring in their own insurance people. It's the nature of the business in the group insurance business. If they want to change agents, they can change them anytime they want.

Mr. Sollers. Were you interested in seeing Peter MacDonald reelected as chairman of the Navajo Nation?

Mr. Ward. Absolutely.

Mr. Sollers. Now, you will recall that Peter MacDonald was reelected in 1986, is that correct?

Mr. Ward. That's correct.

Mr. Sollers. Did you have discussions with Peter McDonald about being appointed as the insurance agent for the tribe?

Mr. Ward. Yes, sir; I did.

Mr. Sollers. When did you have those discussions?

Mr. Ward. In January 1987.

Mr. Sollers. Would that have been shortly after his inauguration?

Mr. Ward. Yes; it was.

Mr. Sollers. And did, in fact, the Navajo Nation appoint you as agent for the tribe in insurance matters?

Mr. Ward. Yes, sir; I was confirmed by all three committees involved in that decision in, I believe it was, August—July or August 1987.

Mr. Sollers. When you had your conversation with Chairman MacDonald in January, what did he tell you?

Mr. Ward. He told me that he had been pleased with the way I'd run the insurance program in his past administrations, and he would attempt to give me the opportunity to once again fill that position.

Mr. Sollers. Did he say he would recommend you for that position?

Mr. Ward. Yes; he did.

Mr. Sollers. Once you were appointed as agent for the tribe, what were your duties?

Mr. Ward. The first request was that I'd run a comprehensive survey of the existing benefits program. The problems that existed at that time were enormous rate increases, especially in the major medical end. He wanted a comprehensive survey of the services that were being rendered in the property and casualty end, of which I have no expertise and which told him at the time. But that I would be willing and would like to bring in Johnson & Higgins, a national insurance broker to conduct a survey of the needs in the benefits program, as well as the property and casualty areas.

Mr. Sollers. Now, in that capacity as agent for the tribe you were not the broker, is that correct?

Mr. Ward. That's correct.

Mr. SOLLERS. Nor, of course, were you the underwriter of the insurance. Is that also true?

Mr. WARD. That's correct.

Mr. SOLLERS. How were you going to get paid?

Mr. WARD. I get paid on a fee basis from the broker, Johnson & Higgins.

Mr. SOLLERS. How much did you make in 1987, do you know? And this would be from being agent for the tribe from Johnson & Higgins.

Mr. WARD. I can't really tell you how much I received in 1987, because I actually received it all in 1988. It was——

Mr. SOLLERS. How much did you——

Mr. WARD [continuing]. A combination.

Mr. SOLLERS. Sorry. I didn't mean to cut you off.

How much have you received to date from Johnson & Higgins for being insurance agent for the tribe?

Mr. WARD. For those 2 years, approximately $101,000.

Mr. SOLLERS. What is your expectation in the future on an annual basis?

Mr. WARD. My expectation would be that it would run between $90,000, perhaps $105,000, depending upon the size of the account, how much it grew.

Mr. SOLLERS. Is that per year?

Mr. WARD. That's per year.

Mr. SOLLERS. That will continue as long as Johnson & Higgins is the broker, is that correct?

Mr. WARD. Yes, sir.

Mr. SOLLERS. Is that income the entire income of Inbanco Corporation?

Mr. WARD. Fortunately, not.

Mr. SOLLERS. What other income do you get?

Mr. WARD. We get substantial income from our structured settlement division, from Ward and Associates. We also receive substantial income from Dreyers Ice Cream of Hawaii, a wholesale distributorship for the State of Hawaii.

Mr. SOLLERS. Is that hundred thousand plus per year that you expect, your entire income from your insurance business?

Mr. WARD. From the group insurance aspect, yes.

Mr. SOLLERS. Now, in January 1987, shortly after Peter MacDonald won reelection, did you have a conversation with Peter MacDonald regarding his living arrangements?

Mr. WARD. Yes; I did.

Mr. SOLLERS. Was he looking for a place to live?

Mr. WARD. Yes; he was.

Mr. SOLLERS. What did you tell him about a place that you owned?

Mr. WARD. I told him that I had an upgraded doublewide trailer in St. Michaels, AZ, that had been sitting empty. I had been trying to sell it, trying to rent it for some period of time, and if he was ever interested in renting the property, that it would be available to him.

Mr. SOLLERS. Did you offer it to him?

Mr. WARD. Yes; I did, at that time.

Mr. SOLLERS. Did he subsequently accept that offer?

Mr. WARD. Yes, sir; he did.

Mr. SOLLERS. And at that time, what did you do with regard to showing him the place, or had you already shown him the place?

Mr. WARD. To my knowledge he had not—to my recollection I don't think he'd been in the trailer before.

Mr. SOLLERS. Did you make arrangements to show him the place?

Mr. WARD. Yes, sir; I did.

Mr. SOLLERS. Who did you instruct to show the trailer to Peter MacDonald?

Mr. WARD. Johnny Donaldson, who had been maintaining the property for us in our absence.

Mr. SOLLERS. Who was Johnny Donaldson?

Mr. WARD. A long term personal friend of mine, who had been in Window Rock for 26 years.

Mr. SOLLERS. Is he also a contractor?

Mr. WARD. Yes, sir; he is.

Mr. SOLLERS. Did the chairman, in fact, decide to move into the house?

Mr. WARD. Yes, sir; he did.

Mr. SOLLERS. The terms of the agreement were what?

Mr. WARD. The terms of his agreement were, he would occupy the house on a month-to-month rental basis, the original rent being $418 a month, starting February 15.

Mr. SOLLERS. Do you know whether or not the tribe was paying for his rent?

Mr. WARD. I do not know that.

Mr. SOLLERS. Shortly after he moved in, did the chairman begin asking you for certain improvements on the house?

Mr. WARD. Yes, sir; he did.

Mr. SOLLERS. Did he have plans drawn for improvements on the house?

Mr. WARD. Yes; he did.

Mr. SOLLERS. Do you know who drew them up?

Mr. WARD. I don't know the man's name. It was—my understanding it was a draftsman or an architect that Johnny Donaldson knew. I was told his name at one time, but I don't recall it.

Mr. SOLLERS. Now, the plans were for what changes?

Mr. WARD. To enclose the two-car garage and turn it into a master bedroom.

Mr. SOLLERS. Was there also going to be a bathroom and a jacuzzi tub, and a deck as well?

Mr. WARD. Yes, sir.

Mr. SOLLERS. Did you decide to make the improvements?

Mr. WARD. Yes, sir.

Mr. SOLLERS. Why did you decide to do so?

Mr. WARD. I felt it was in my best interest to make those necessary changes in the quarters.

Mr. SOLLERS. Did the fact that the chairman had requested these changes make a difference in your decision?

Mr. WARD. Absolutely.

Mr. SOLLERS. Who did you approach to make the improvements?

Mr. WARD. Johnny Donaldson.

Mr. SOLLERS. And why did you approach him?

Mr. WARD. He's the only quality contractor I know that exists on the Navajo.

Mr. SOLLERS. Now, did Johnny Donaldson agree to make the changes?

Mr. WARD. He did.

Mr. SOLLERS. What were the terms?

Mr. WARD. The terms were that he would make the improvements with the agreement that at the end of 3 to 5 years, he would have the opportunity to purchase the house at the current appraised—less than the current appraised value of the house, minus the improvements.

Mr. SOLLERS. Was he going to be paid anything for these improvements?

Mr. WARD. He was not.

Mr. SOLLERS. Did he ask you to do anything for him in return for making the improvements besides giving him the opportunity to buy the house later on down the road?

Mr. WARD. Yes; he did.

Mr. SOLLERS. What did he ask you to do?

Mr. WARD. He asked if I could assist him in getting a list of work that might be coming up under the CIP project, Capitol Improvements Projects, because he was in the process of having to lay off some employees because his business was very slow.

Mr. SOLLERS. Was he looking for contracts?

Mr. WARD. He was looking for any kind of work he could get, including those contracts.

Mr. SOLLERS. Was this purely a verbal agreement with him?

Mr. WARD. Yes, sir.

Mr. SOLLERS. What did you tell him with regard to what you would tell the chairman about these improvements?

Mr. WARD. It would be an opportunity for him to demonstrate the quality of his workmanship, and that if he completed the work I would try to help him get some business.

Mr. SOLLERS. Did you tell him you would attempt to get recognition from the chairman for him?

Mr. WARD. Yes; I did.

Mr. SOLLERS. Did you, in fact, tell the chairman that Johnny Donaldson was doing the work on the house?

Mr. WARD. Yes; I did.

Mr. SOLLERS. Did Johnny Donaldson, in fact, make those improvements?

Mr. WARD. He, in fact, did.

Mr. SOLLERS. He received no compensation for that, is that correct?

Mr. WARD. That's correct.

Mr. SOLLERS. Do you know whether Johnny Donaldson got some contracts at that time for having made the improvements?

Mr. WARD. No, sir; I do not.

Mr. SOLLERS. Did you raise the rent of the chairman at that time?

Mr. WARD. Not at that time.

Mr. SOLLERS. Now, at this point the character of the doublewide trailer was changing dramatically, was it not?

Mr. WARD. Substantially.

Mr. **Sollers**. Was this then the end of the request for improvements?

Mr. **Ward**. No; it was not.

Mr. **Sollers**. During 1988, did the chairman request additional work?

Mr. **Ward**. Yes; he did.

Mr. **Sollers**. Did he make it clear what he wanted done?

Mr. **Ward**. Fairly clear, yes, sir.

Mr. **Sollers**. What did you respond?

Mr. **Ward**. I didn't at that time.

Mr. **Sollers**. You did not take any steps to make the improvements, is that correct?

Mr. **Ward**. I went into the "Navajo stall".

Mr. **Sollers**. You went into the "Navajo stall"? What is the "Navajo stall"?

Mr. **Ward**. It's difficult to explain to someone that hasn't been living up there. You do nothing.

Mr. **Sollers**. Well, at some point did you, in fact, take any steps to make further improvements on the house?

Mr. **Ward**. Shortly thereafter.

Mr. **Sollers**. Tell us what happened?

Mr. **Ward**. The existing den, family room, was extended.

Mr. **Sollers**. Did you know that these improvements were going to be made?

Mr. **Ward**. Not specifically.

Mr. **Sollers**. Well, tell the committee what specifically happened at that time?

Mr. **Ward**. I got a call from Johnny Donaldson—first, let me back up.

I knew that he wanted the improvements. I just kind of let it lie. Then I got a call from Johnny Donaldson—I don't recall the date. He told me that he had some drawings that he had received from the chairman, that he would like to make a few improvements in the house. I asked Mr. Donaldson, how extensive those improvements were. He gave his usual answer of, not much. I said, fine, do them.

Mr. **Sollers**. Now, prior to this conversation, had you had a conversation with the chairman during which you'd indicated to him that you didn't think Johnny Donaldson would do any more improvements because he wasn't getting any contracts?

Mr. **Ward**. Yes; I did.

Mr. **Sollers**. During that conversation what, if anything, did the chairman tell you to do?

Mr. **Ward**. That we should make an attempt to help Johnny Donaldson.

Mr. **Sollers**. What further instructions did he give you?

Mr. **Ward**. He asked me to contact one of his staff assistants and see if he could get the CIP list of projects so that he could bid on them.

Mr. **Sollers**. Did he also ask you to see an individual with the Navajo Nation?

Mr. **Ward**. Yes, sir; he did.

Mr. **Sollers**. Who was that individual?

Mr. **Ward**. John Hunt.

Mr. SOLLERS. Who's John Hunt?

Mr. WARD. I don't know his exact title. I think staff assistant would be proper.

Mr. SOLLERS. Is he fairly high up in the hierarchy of the Navajo Nation?

Mr. WARD. Yes; he is.

Mr. SOLLERS. And did you, in fact, pursuant to the instructions of the chairman, go see John Hunt?

Mr. WARD. Yes; I did go see John Hunt.

Mr. SOLLERS. What did you tell Mr. Hunt?

Mr. WARD. I asked him if he could get the list of upcoming CIP projects, and if there was any other projects that had been budgeted that were coming out that Johnny could have an opportunity to bid on. He wanted to know how long he could make it, meaning Johnny Donaldson. It was getting pretty short.

Mr. SOLLERS. Did you tell the chairman—or excuse me.

Did you tell Mr. Hunt that the chairman was interested in seeing Johnny Donaldson obtain some contracts?

Mr. WARD. I told him that the chairman said it would be a good idea if we could help Johnny Donaldson out.

Mr. SOLLERS. Did Mr. Hunt agree to see what he could do for Johnny Donaldson?

Mr. WARD. That was not his area of responsibility, but he said, yes, he would see what he could do about getting that list.

Mr. SOLLERS. In fact, at the time there was some remodeling work to take place on the tribal headquarters, is that true?

Mr. WARD. Yes; but I'm not sure about the exact timing.

Mr. SOLLERS. Did you subsequently learn that Johnny Donaldson got some of that work?

Mr. WARD. Yes.

Mr. SOLLERS. Now, after your conversation with Mr. Hunt of the Navajo Nation, did you contact Johnny Donaldson?

Mr. WARD. Yes; I did.

Mr. SOLLERS. At that time, what did you say to Johnny Donaldson?

Mr. WARD. I told him I thought the CIP list would be coming forthwith.

Mr. SOLLERS. Did you tell Mr. Donaldson that he should see Mr. Hunt?

Mr. WARD. I don't recall if I told him if he should see Mr. Hunt or call Mr. Hunt. It was one of the two.

Mr. SOLLERS. At the least, he should have a conversation with Mr. Hunt, is that correct?

Mr. WARD. That's correct.

Mr. SOLLERS. Did you tell Mr. Donaldson that it was your impression that Mr. Hunt would try to get him some work?

Mr. WARD. Yes.

Mr. SOLLERS. Did you hear that Mr. Donaldson did go see Mr. Hunt, or speak with him?

Mr. WARD. Yes; I think so.

Mr. SOLLERS. At that time, when you had your conversation with Johnny Donaldson, did you say anything to him about further improvements to your house?

Mr. WARD. To Johnny Donaldson?

Mr. **Sollers**. Correct.

Mr. **Ward**. I told him that I would prefer if there were no further improvements to the house.

Mr. **Sollers**. Was it your intention, once Mr. Donaldson got some contracts on the reservation, to then approach him about the improvements that the chairman had requested? This is a second set of improvements.

Mr. **Ward**. Yes.

Mr. **Sollers**. Do you know whether the promised projects to Johnny Donaldson ever materialized?

Mr. **Ward**. I don't know for sure, but I don't think they did.

Mr. **Sollers**. But, Mr. Ward, what did materialize was a direct request from Peter MacDonald to Johnny Donaldson for more improvements on your house, did it—

Mr. **Ward**. That's my understanding.

Mr. **Sollers**. In fact, subsequent improvements were made to your house, is that true?

Mr. **Ward**. That is true.

Mr. **Sollers**. What was the overall cost of the improvements made to your house?

Mr. **Ward**. I was told by Mr. Donaldson it was roughly $50,000.

Mr. **Sollers**. Now, did you find that you were in a difficult position to refuse the chairman's request for improvements?

Mr. **Ward**. Yes.

Mr. **Sollers**. Did you feel that you could refuse the request for improvements?

Mr. **Ward**. Yes; I felt I could have.

Mr. **Sollers**. Had you refused the request, do you believe it would have affected your status on the reservation?

Mr. **Ward**. It's possible.

Mr. **Sollers**. Now, Mr. Ward, your family has also made some small loans to Peter MacDonald, Jr., is that true?

Mr. **Ward**. That's correct.

Mr. **Sollers**. To your knowledge, have they been repaid?

Mr. **Ward**. There is one that has not been repaid.

Mr. **Sollers**. How large is that loan?

Mr. **Ward**. It's $500.

Mr. **Sollers**. Have you also purchased airline tickets for the MacDonalds?

Mr. **Ward**. Yes; I have.

Mr. **Sollers**. Is one of those airline tickets still outstanding, as far as you being compensated for it?

Mr. **Ward**. That's correct.

Mr. **Sollers**. How much is that for?

Mr. **Ward**. Approximately $310.

Mr. **Sollers**. Thank you, Mr. Ward.

Mr. Chairman, that concludes my questions.

Senator **DeConcini**. Senator McCain.

Senator **McCain**. Thank you, Mr. Chairman.

Mr. Ward, just to clarify a point you made earlier in your testimony.

When we change administrations in this town, we change a lot of things but we don't arbitrarily get rid of people who are providing insurance or other services to the Federal Government. There are laws that Congress enacts that prevent such things from happening when contracts are up for renegotiation. There are some very strict guidelines under which these procedures are conducted.

Mr. Ward, do you feel that anything that happened while the chairman was using your trailer, was improper or unethical?

Mr. WARD. No; I do not.

Senator McCAIN. Are you in the custom of lending your trailer, or any other homes that you might have, to people?

Mr. WARD. We have in the past, sir.

Senator McCAIN. You have in the past?

Mr. WARD. Yes, sir.

Senator McCAIN. To whom?

Mr. WARD. Friends and family.

Senator McCAIN. Did you lend them for extended periods of time?

Mr. WARD. No; not for an extended period of time, Senator.

Senator McCAIN. I have no further questions, Mr. Chairman.

Senator DECONCINI. Thank you, Senator McCain.

Mr. Ward, what's the value of that property now that you leased to Chairman MacDonald? What would you put it at?

Mr. WARD. The last appraisal on three acres and structure was approximately $75,000. I don't know the actual cost of the work that was done by Mr. Donaldson versus the retail.

Senator DECONCINI. Is that the land and the building without the improvements?

Mr. WARD. That's correct.

Senator DECONCINI. Is it $70,000, not counting what Mr. Donaldson might have——

Mr. WARD. $75,000 prior to the work being done.

Senator DECONCINI. So if you estimate that at $50,000, it's obvious it's $120,000, its value?

Mr. WARD. Yes, sir.

Senator DECONCINI. The rent was $450.00?

Mr. WARD. It was $418——

Senator DECONCINI. Did you raise the rent?

Mr. WARD. Yes; I did.

Senator DECONCINI. When did you raise the rent?

Mr. WARD. Last August or September.

Senator DECONCINI. And was that between you and Mr. MacDonald, did you discuss that with Chairman MacDonald?

Mr. WARD. Yes; I did.

Senator DECONCINI. What took place?

Mr. WARD. We had a conversation on the telephone. There had been a problem with my estimate of the average utility cost, and so it was necessary to raise the rent another $85 a month to cover that discrepancy.

Senator DECONCINI. What is the average utility cost on that property now, like last month?

Mr. WARD. It was approximately $118, and now—the total cost I'm going to tell you is going to be around $175, $180.

Senator DECONCINI. $175, that's an average cost per month for utilities?

Mr. WARD. Averaged on an annualized basis.

Senator DECONCINI. Is that deeded land?

Mr. WARD. It is deeded land.

Senator DECONCINI. What are the taxes on that 3 acres, do you know?

Mr. WARD. I do not recall.

Senator DECONCINI. Were they $100 a month or less?

Mr. WARD. Mr. Chairman, if I gave you an answer, I would be guessing.

Senator DECONCINI. Do guess for me, and I'll take it as such.

Mr. WARD. Perhaps a couple hundred dollars a year.

Senator DECONCINI. And do you have it insured?

Mr. WARD. Yes; we do.

Senator DECONCINI. Do you know what that is?

Mr. WARD. How much the insurance costs?

Senator DECONCINI. Yes; give me a guess, that will be sufficient. $500 a year?

Mr. CROXEN. Probably $100 or $150.

Senator DECONCINI. A year for insurance?

Mr. CROXEN. Yes.

Senator DECONCINI. Do you know what the value of the insurance is, what the policy value is? Is it $70,000, $50,000?

Mr. WARD. I think it is $70,000 or $75,000.

Senator DECONCINI. Mr. Ward, are you an insurance agent?

Mr. WARD. Yes; I am.

Senator DECONCINI. Do you have a private business of insurance, and it is not Inbanco?

Mr. WARD. Inbanco is the business.

Senator DECONCINI. It is your insurance business?

Mr. WARD. Yes.

Senator DECONCINI. And you testified that the Navajo Reservation was not your only client, is that correct?

Mr. WARD. That is the only group client.

Senator DECONCINI. Do you have other insurance clients?

Mr. WARD. The structured settlement business falls under the insurance statutes.

Senator DECONCINI. Explain that to me. What's the structured settlement business?

Mr. WARD. We represent the defendant in personal injury lawsuits, in settling personal injury lawsuits, whereby we annuitize part of the proceeds to extend over the claimant's lifetime or a period certain——

Senator DECONCINI. If I take out an annuitant policy, is that what you do?

Mr. WARD. That's correct.

Senator DECONCINI. In that insurance business?

Mr. WARD. That's correct.

Senator DECONCINI. Primarily is that what your insurance business is?

Mr. WARD. Yes, sir; it is.

Senator DECONCINI. Have you had any other experience in group insurance?

Mr. WARD. Other small accounts.

Senator DECONCINI. You were asked by the chairman to come in and take over the insurance, and you hired some professionals to come in and assess it for you, is that what you did?

Mr. WARD. I recommended to the Tribal Insurance Commission that they have a meeting with the firm of Johnson & Higgins, the brokerage firm of Johnson & Higgins, which they did in fact do.

Senator DECONCINI. Then they decided to buy insurance from those brokers?

Mr. WARD. They decided to appoint Johnson & Higgins as their broker for purchasing the coverages that were necessary.

Senator DECONCINI. They went ahead and did that and they bought the insurance?

Mr. WARD. That's correct.

Senator DECONCINI. How was your fee determined?

Mr. WARD. I get paid directly in a consultant basis from Johnson & Higgins, according to the amount of work that I do.

Senator DECONCINI. What is that, a percent of the premiums or what?

Mr. WARD. It comes out to about 1.6 percent of the premiums, or less, depending upon how extensive my activity is.

Senator DECONCINI. Did you ever discuss this with the chairman?

Mr. WARD. I did not.

Senator DECONCINI. As to the fee arrangement you had?

Mr. WARD. I don't recall ever discussing that with him.

Senator DECONCINI. Did he know that you were employed by the insurance broker?

Mr. WARD. Yes; he did.

Senator DECONCINI. You're a friend of Chairman MacDonald's. How long have you been a friend of the chairman?

Mr. WARD. Since the middle 1970's. The beginning of our relationship was that of any other incoming chairman. He had called me in his office shortly after he took office the first time, and told me that it was his intent to dismiss me as the agent of record for the Navajo Nation.

Senator DECONCINI. Chairman MacDonald did that?

Mr. WARD. Yes, sir.

Senator DECONCINI. What time period was that?

Mr. WARD. Early 1970—I think it was the summer of 1971.

Senator DECONCINI. That's when you first got to know him?

Mr. WARD. I first got to know him, sir, prior to that when he was a director of the Office of Navajo Economic Opportunity. I attempted to submit my proposal that the ONEO Department take on the same group insurance as the rest of the tribe, and he threw me out of his office.

Senator DECONCINI. He threw you out, you mean he said, please leave?

Mr. WARD. He said he wasn't interested in carrying on a discussion with me about insurance.

Senator DECONCINI. In 1972 you met him under what circumstances?

Mr. WARD. You mean after he was elected?

Senator DECONCINI. After he was elected.

Mr. WARD. Shortly after he was elected he had called me into his office and told me it was his intent to terminate my relationship with the Navajo Tribe.

Senator DECONCINI. And did he?

Mr. **Ward**. He did not. He gave me a 90-day trial period to make suggestions and recommendations in the benefits program. He was concerned that I was a Nakai man.

Senator **DeConcini**. The former chairman?

Mr. **Ward**. That's correct.

Senator **DeConcini**. You proceeded to make a proposal that was acceptable to the chairman?

Mr. **Ward**. It apparently was. I was not allowed to make the proposal to him. I made it to a staff assistant at that time.

Senator **DeConcini**. Were you, during that time, asked to make any gifts or gratuities to the chairman or the staff of the chairman?

Mr. **Ward**. No, sir.

Senator **DeConcini**. Did you buy any presents for them?

Mr. **Ward**. Not for that chairman.

Senator **DeConcini**. For what chairman did you buy presents?

Mr. **Ward**. In 1967 we were pretty much forced by the then general counsel to provide a motorcoach.

Senator **DeConcini**. A motorcoach?

Mr. **Ward**. A Greyhound bus that was converted into a motorhome.

Senator **DeConcini**. For the chairman?

Mr. **Ward**. For the chairman's general counsel.

Senator **DeConcini**. When you sav you were pretty much required to do that, do you mean did they tell you if you didn't do it you wouldn't have the insurance account, in essence, or directly?

Mr. **Ward**. In essence, yes.

Senator **DeConcini**. Now, in your course of—what all of the sudden—how did you become such a friend of Chairman MacDonald? How did this come about after he——

Mr. **Ward**. Meeting him at tribal functions over a period of years. It wasn't something that happened very quickly, which is typical of an Anglo's relationship to a Chief, or any other high official of the Navajo Tribe. They don't trust you.

Senator **DeConcini**. During that period of friendship that you've had with Chairman MacDonald, when would you say the friendship started, sometime after the 1972 90-day trial period?

Mr. **Ward**. In about 1975 or 1976.

Senator **DeConcini**. During the period that you knew Mr. MacDonald as a friend from 1975, 1976, or from 1972 on, did you give any gifts to Chairman MacDonald?

Mr. **Ward**. I paid for dinners. I paid for golf matches. I picked up a couple of hotel rooms. Minimal.

Senator **DeConcini**. Did you loan him any money?

Mr. **Ward**. No, sir, I have not.

Senator **DeConcini**. Did you ever give him cash?

Mr. **Ward**. I have never given him cash.

Senator **DeConcini**. Or anybody in his family or his staff?

Mr. **Ward**. We have loaned his son minor amounts of money.

Senator **DeConcini**. Like the $500 that you mentioned?

Mr. **Ward**. That was the largest, yes, sir.

Senator **DeConcini**. Were those requests made directly from the son?

Mr. Ward. They were, and they have all been repaid except for the last one.

Senator DeConcini. When was the last one made?

Mr. Ward. In December, prior to Christmas.

Senator DeConcini. You just mentioned the "Navajo stall". Do you mean, for the record, just failing to answer, or to give a definitive answer, is that what you really mean.

Mr. Ward. Failure of commitment.

Senator DeConcini. Failure of commitment?

Mr. Ward. Yes.

Senator DeConcini. The "Navajo stall" you mentioned was the fact that Donaldson—or excuse me, was it Mr. MacDonald who said he wanted further improvements to the house, and you just did not answer or make any commitment?

Mr. Ward. That's correct.

Senator DeConcini. When you were able to influence Mr. Hunt, or talk to Mr. Hunt, about getting the CIP list for Mr. Donaldson, that did happen?

Mr. Ward. Yes; it did happen.

Senator DeConcini. Is that list a private, secret list of some kind, do you know? Is it not available to the public?

Mr. Ward. To my knowledge it is eventually available to all contractors.

Senator DeConcini. Why couldn't Mr. Donaldson get it? Did he share with you why he couldn't get it, or did you ask him?

Mr. Ward. The list hadn't come out yet. We were trying to get—it was actually a preliminary of things that were coming out on the list. He wanted to know how long he was going to have to hang on before he had a potential——

Senator DeConcini. You were trying to get the list before it was made available to other contractors?

Mr. Ward. That's correct.

Senator DeConcini. And that did happen?

Mr. Ward. To my knowledge it did happen. I'm not certain if someone else also had it, but to my knowledge.

Senator DeConcini. So Mr. Donaldson, to your knowledge, got the list with your influence, or contacting Mr. Hunt?

Mr. Ward. I gave him the list.

Senator DeConcini. You gave it to him? Mr. Hunt gave it to you?

Mr. Ward. That's correct.

Senator DeConcini. You gave it to Mr. Donaldson?

Mr. Ward. That's correct.

Senator DeConcini. To your knowledge Mr. Donaldson was able to get some contracts?

Mr. Ward. I don't know what contracts he's received.

Senator DeConcini. You don't know?

Mr. Ward. I honestly don't know.

Senator DeConcini. Have you talked to Chairman MacDonald about Mr. Donaldson's getting some contracts? Was that ever discussed again after he told you to go see Hunt and see if Mr. Hunt could get the list for you to give to Mr. Donaldson?

Mr. WARD. I pursued it with the chairman, that it was going to need to be more continuing support as far as that endeavor was concerned, to try to get more work for Mr. Donaldson.

Senator DECONCINI. I don't know if you've listened to some of the testimony given over the last few days about gifts and gratuities given to various tribal leaders, not just on this reservation.

Are you familiar with that practice?

Mr. WARD. I'm aware that it happens.

Senator DECONCINI. Apparently in 1976 or sometime, you said— or 1967, you said you had participated with such an effort, buying a motorcoach, is that correct?

Mr. WARD. That's correct.

Fortunately, the election was lost by the Nakai administration, and we never had to perform on that commitment.

Senator DECONCINI. Oh, you didn't have to. You had agreed to?

Mr. WARD. We had agreed to. We went into the "Navajo stall".

Senator DECONCINI. And the election was lost and then you didn't have to fulfill or make the commitment? Actually, you had made the commitment then?

Mr. WARD. We had made the commitment. As a matter of fact, I lived in that bus for a couple of years in Fort Defiance, and it was a nightmare.

Senator DECONCINI. You apparently spent a lot of time on the reservation, is that correct?

Mr. WARD. That is correct.

Senator DECONCINI. Because you had a home over there, and you lived in a motorcoach for a couple of years. And what was the nature of your business up there, primarily the insurance?

Mr. WARD. Totally the insurance, the administration of all benefits programs for the Navajo Tribe, and its participating entities and enterprises.

Senator DECONCINI. In the insurance selection, is that done by a committee of the tribal council?

Mr. WARD. Are you speaking, Senator, of the underwriting company?

Senator DECONCINI. No; excuse me.

The selection of an insurance carrier. Who makes that selection for the Navajo Government?

Mr. WARD. The Navajo Tribal Insurance Commission. It's put out by its broker, out to bid. Certain programs are established, then it's put out to bid, and the quality of the company and the price of the bid are taken into consideration.

Senator DECONCINI. Who is the Navajo Insurance Commission?

Mr. WARD. The Navajo Insurance Commission is a group of Navajo's from entities, enterprises, and different departments.

Senator DECONCINI. And how many are there on that commission, do you know? Is it more than three?

Mr. WARD. I think there are seven, Senator.

Senator DECONCINI. Do you know them?

Mr. WARD. I know several of them.

Senator DECONCINI. Who appoints them?

Mr. WARD. One representative that comes from the chairman's office is appointed by the chairman. The personnel director is automatically on it. The director of the Department of Labor is automatically on it. There's automatically a representative from one of the tribal entities or enterprises. In this case there's a representative from Navajo Tribal Utility Authority, to represent the interests of the utilities—excuse me, of the entities.

Senator DECONCINI. Did you have any relationship with any of those people, other than being—advising them to hire somebody to do a study on the kinds of needs that were necessary?

Mr. WARD. I've had a relationship, Senator, with some of those people for 15, 16 years.

Senator DECONCINI. What has that relationship been?

Mr. WARD. They were assistant department heads when I first went out there in the middle to late 1960's, very low level jobs. And as we all got older, they progressed into higher echelon positions. They were participants in the group insurance program. They knew how it was run, they knew who was running it.

Senator DECONCINI. And so your contacts with them were all business? You had no social or personal contacts?

Mr. WARD. That's not correct.

I had—living up there on the reservation, I had extensive social contacts with some of them.

Senator DECONCINI. Did you make any gifts or gratuities to any of those members of the commission?

Mr. WARD. Dinners, lunches, a hotel room every now and then, golf, football tickets for Arizona State University.

Senator DECONCINI. Over what period of time did you make those kind of gratuities and gifts?

Mr. WARD. It was an ongoing process.

Senator DECONCINI. From 1972 and beyond, or before 1972?

Mr. WARD. You're going to have to go back to 1967, Senator, for that.

Senator DECONCINI. Starting in 1967?

Mr. WARD. Softball teams——

Senator DECONCINI. Through until today? Are you still continuing that activity today?

Mr. WARD. To an extremely minor extent, because I no longer live up there.

Senator DECONCINI. When did you move from up there, Mr. Ward?

Mr. WARD. When I was thrown out in 1982.

Senator DECONCINI. And you haven't been back?

Mr. WARD. I have been back, but I have not lived up there on a permanent basis. Since then I lived in Hawaii during most of the Zah administration.

Senator DECONCINI. So for a period of 1967 until 1982, it was a practice in part of your business to buy football tickets and make gifts and buy lunches and dinners and hotel rooms——

Mr. WARD. And finance softball teams, baseball teams, things like that, otherwise you might have a lot of trouble getting your premium checks out of the Division of Finance.

Senator DECONCINI. What do you mean by that, that if you did not—can you explain what you meant by that?

Mr. WARD. I can explain that, Senator, by stating it was insinuated that if I didn't buy new uniforms and finance entrance fee for softball teams, rodeo events, and things like that, then the premium checks that were due the underwriter would be slowed down.

Senator DeConcini. When you say it was insinuated, was it just by the fact if you said "no", you realized the checks didn't come, if you said "yes" the checks went? Did you have that experience?

Mr. Ward. Yes, I did say "no".

Senator DeConcini. And when you said "no", the checks didn't go?

Mr. Ward. Not for a long time.

Senator DeConcini. When you said "yes", the check went quicker? All of the premiums in arrears up to current were paid whenever you complied with whatever the request was of the commission member?

Mr. Ward. Not a commission member, someone from the Department of Finance and Administration.

Senator DeConcini. Not commission members?

Mr. Ward. Not commission members.

Senator DeConcini. Or commission staff?

Mr. Ward. It was prior to there being an insurance commission.

Senator DeConcini. So before that the insurance was paid out of the finance office, and that's where the requests came for these special events?

Mr. Ward. It's always been paid out of the Finance Department, Senator, but yes, that is where some of those requests came from.

Senator DeConcini. And once there was a commission established then the requests came from the commission staff or members of the commission as well as the finance office?

Mr. Ward. When the commission was established it was an extreme relief to us, because it put someone in between us and the Division of Finance as a group of individuals, and it pretty much stopped it.

Senator DeConcini. So you didn't have to do this with the commission, it's members or the staff of the commission?

Mr. Ward. That's correct.

Senator DeConcini. Except to the extent that you testified to.

Mr. Ward. That's correct.

Senator DeConcini. But it was substantially reduced vis-a-vis when you were dealing only with the Division of Finance?

Mr. Ward. It was substantially reduced.

Senator DeConcini. How would you, as a business man, Mr. Ward, how would you classify the environment on the Navajo Reservation for doing business?

Mr. Ward. Difficult at best, chaotic.

Senator DeConcini. Difficult at best, and can you explain why?

Mr. Ward. You're dealing with a major, very slow moving bureaucracy, trying to get decisions made at even a low level. When you anticipate a circumstance being rectified normally in a week, it may take 3 months. Things do not happen quickly.

Senator DeConcini. Is there a recognized way to speed that up?

Mr. Ward. I understand the line of questioning, Senator.

Senator DeConcini. I'm not trying to trick you.

Mr. Ward. If one wanted to be aggressive, to follow that line, it's certainly available.

Senator DeConcini. And that is by making gifts or getting yourself in a position to be helpful to various people that can make those decisions?

Mr. Ward. That's correct. But I don't want to mislead you by making you think that it takes a lot to make things happen. It's the cost of doing business, and that's a fact. It was there when I was there in 1967, and it's there now. But the cost is minimal, generally speaking.

Senator DeConcini. Well, what do you term minimal, meals, tickets, rodeo prizes?

Mr. Ward. A high volume of minimum expense items.

Senator DeConcini. What would you call a minimum expense, a couple hundred dollars a crack?

Mr. Ward. Yes.

Senator DeConcini. Several times a month, or several times a year?

Mr. Ward. It depends if it's football season or not.

Senator DeConcini. Did you buy season tickets for anybody?

Mr. Ward. No; I have not purchased season tickets for anybody, but I have some season tickets.

Senator DeConcini. You would give those away?

Mr. Ward. Some of them.

Senator DeConcini. Thank you, Mr. Ward, I have no further questions.

Counsel?

Mr. Sollers. No further questions, Mr. Chairman.

Senator DeConcini. Our next witness will be Johnny Donaldson.

Mr. Donaldson, would you raise your right hand, please?

[Witness sworn.]

Senator DeConcini. Please be seated, Mr. Donaldson.

Mr. Sollers will proceed with the questioning.

STATEMENT OF JOHNNY DONALDSON, PRESIDENT, DINEH CONSTRUCTION AND MECHANICAL

Mr. Sollers. Good afternoon, Mr. Donaldson.

Mr. Donaldson. Good afternoon.

Mr. Sollers. Please state your full name for the record, sir.

Mr. Donaldson. Johnny Donaldson.

Mr. Sollers. Where do you live, Mr. Donaldson?

Mr. Donaldson. I live at Tse Bonita, NM, which is near Window Rock, Arizona. My mailing address is Box 159, Window Rock, AZ.

Mr. Sollers. How are you employed, sir?

Mr. Donaldson. Yes.

Mr. Sollers. How?

Mr. Donaldson. Self employed through Dineh Construction.

Mr. Sollers. The name of your company is what?

Mr. Donaldson. Dineh Construction and Mechanical.

Mr. Sollers. Where do you perform most of your work?

Mr. Donaldson. On the Navajo Reservation.

Mr. Sollers. How long have you been working on the Navajo Reservation, Mr. Donaldson?

Mr. Donaldson. About 28 years.

Mr. SOLLERS. Can you estimate the gross dollar figure of contracts that you performed on the Navajo Reservation since 1970 or so?

Mr. DONALDSON. Since 1970, when I started contracting, approximately $12 to $14 million.

Mr. SOLLERS. So you're a relatively small contractor, is that true?

Mr. DONALDSON. Very small.

Mr. SOLLERS. Now, have you affiliated yourself with an Indian contractor to qualify for Indian Preference Work?

Mr. DONALDSON. Yes; I have.

Mr. SOLLERS. What's the name of that person?

Mr. DONALDSON. His name is Doug Clark, and he is president of the corporation.

Mr. SOLLERS. What's the nature of that relationship with Mr. Clark?

Mr. DONALDSON. Well, it's been very good. I think it's the only Navajo preference company that's working on the Navajo Reservation.

Mr. SOLLERS. How is your business structured? What percentage ownership does Mr. Clark have?

Mr. DONALDSON. He has 65 percent.

Mr. SOLLERS. What sort of profits has he made?

Mr. DONALDSON. Annually he makes $60,000, $70,000 a year. He's able to go to the bank, borrow money, sign the note. He has a lot of authority, more authority than I really do.

Mr. SOLLERS. What's his position in the company?

Mr. DONALDSON. He's president of the corporation.

Mr. SOLLERS. What's your annual income from Dineh Construction?

Mr. DONALDSON. The Mrs. and I probably get $50,000 a year.

Mr. SOLLERS. What are her duties?

Mr. DONALDSON. She does some secretarial work in the office.

Mr. SOLLERS. Now, Mr. Donaldson, are there problems, based on your experience with Indian Preference on the reservation?

Mr. DONALDSON. Yes; there has been.

Mr. SOLLERS. What are some of the problems that you've observed?

Mr. DONALDSON. Politics is number one.

Mr. SOLLERS. Have you seen an emergence of what we'll call Indian fronts?

Mr. DONALDSON. Yes; I've seen a lot of those come and go.

Mr. SOLLERS. Is that a pervasive problem?

Mr. DONALDSON. Yes; it is.

Mr. SOLLERS. Do the Indians who align themselves in these relationships get training, do you think?

Mr. DONALDSON. In some cases, yes. But on larger contracts, for instance a HUD project, maybe $3 or $4 million, when it's finished the Indian is gone.

Mr. SOLLERS. How about a share of profits?

Mr. DONALDSON. That I don't know about. I think basically a salary.

Mr. SOLLERS. Have you observed Indian fronts where the Indian is utilized for a single project and then left behind?

Mr. DONALDSON. Yes; I have.

Mr. SOLLERS. In your view has Indian Preference reduced competition on the reservation?

Mr. DONALDSON. Yes; it has.

Mr. SOLLERS. What effects, if any, has that had?

Mr. DONALDSON. Well, it's had effect on the workmanship out there.

Mr. SOLLERS. The workmanship?

Mr. DONALDSON. Yes; quality of work.

Mr. SOLLERS. How about as to prices on the reservation?

Mr. DONALDSON. Well, it makes the profits a little better when there's work. But the last 2 years there's been no work.

Mr. SOLLERS. Do legitimate Indian companies have the ability to obtain bonding on their own, in your view?

Mr. DONALDSON. The only one I know of is PC&M Construction, that can do bonding.

Mr. SOLLERS. Now, what has been your observation concerning conditions on the Navajo Reservation over the last couple of years?

Mr. DONALDSON. Well, it's not improved, it's declined. There's very little construction, and employment is probably 45 percent unemployment there. I don't see anything moving. I think it is going backward.

Mr. SOLLERS. Do you have any insight as to why things are going backwards?

Mr. DONALDSON. No; I really don't. I stay away from the politics. It's my understanding the Navajo Tribe has no funds, most accounts are broke. CIP projects has never been issued, never been put out for bidding, because of lack of funds.

Mr. SOLLERS. Have you observed a substantial amount of waste and mismanagement on the reservation?

Mr. DONALDSON. Yes; I have.

Mr. SOLLERS. Speaking of economic conditions on the reservation, has payment on your projects been slow?

Mr. DONALDSON. Yes; it has. They've changed drastically in the last 1½ years.

Mr. SOLLERS. Has it become much slower?

Mr. DONALDSON. Yes; at one time we could expect payment within a couple of weeks. Now it may be 4 or 5 months.

Mr. SOLLERS. What sort of mismanagement have you observed?

Mr. DONALDSON. That would take a long time to tell you all about that.

Mr. SOLLERS. Well, why don't you try us for a little bit?

Mr. DONALDSON. Mismanagement, there's a major problem of zoning out there, bringing in unqualified contractors, building buildings that have no future in them.

For instance, now, the Navajo Tribe has set up a company called Navajo Building Corporation, which is building modular homes for the Navajo Reservation. It just started about three months ago. I think there's been about $2 million put into it, and it's my understanding it's broke and probably will be closed in the future.

Mr. SOLLERS. Have you been approached for kickbacks by tribal officials?

Mr. DONALDSON. Yes; in the past I have. As I say I stay away from Window Rock. Mr. Clark does all the paper work, contracts, and so on. But I've had many people contact me in the past, 1½ to 2 years.

Mr. SOLLERS. Have you provided any kickbacks?

Mr. DONALDSON. No; I haven't.

Mr. SOLLERS. Do you think that's affected your ability to get business on the reservation?

Mr. DONALDSON. I think so.

Mr. SOLLERS. Have you been approached for various other items, or favors, loans, gratuities?

Mr. DONALDSON. I've made some individual loans, personally, out there through my family account. Not the politicians, and so on, but to personal friends.

Mr. SOLLERS. Have you resisted other overtures?

Mr. DONALDSON. No.

Mr. SOLLERS. Let me repeat the question.

Mr. DONALDSON. Yes, excuse me.

Mr. SOLLERS. Do you think that may have cost you jobs along the way?

Mr. DONALDSON. I'm sure it has in the past.

Mr. SOLLERS. Do you find in doing business on the reservation, as an outside contractor, that it's important to remain in favor with the tribal administration?

Mr. DONALDSON. Yes.

Mr. SOLLERS. What happens if you fall into disfavor with a tribal group with which you're doing business?

Mr. DONALDSON. Well, I'm afraid that's when the kickbacks would start coming in.

Mr. SOLLERS. To get back into good favor?

Mr. DONALDSON. That's right.

Mr. SOLLERS. Is it important to remain in good favor with the chairman of the tribe?

Mr. DONALDSON. Yes.

Mr. SOLLERS. How about Chairman McDonald?

Mr. DONALDSON. Yes.

Mr. SOLLERS. Do you know Peter McDonald from his prior administration?

Mr. DONALDSON. Yes; I do.

Mr. SOLLERS. You're aware that he's been in power, again, since 1987?

Mr. DONALDSON. Yes.

Mr. SOLLERS. Does he wield a lot of influence on the reservation, in your opinion?

Mr. DONALDSON. Yes.

Mr. SOLLERS. Now, did there come a time that you were asked to perform some work on a house owned by Larry Ward?

Mr. DONALDSON. Yes.

Mr. SOLLERS. Where's that house?

Mr. DONALDSON. St. Michaels, AZ, 2 miles east of Window Rock.

Mr. SOLLERS. How did that come about, sir?

Mr. DONALDSON. First I got a call from Mr. Ward that the chairman would like to rent the home, could I pick the chairman up at his office and show him the home, which I had taken care of for 4 years, previously.

I picked Chairman MacDonald up, and we went over and looked at the residence, and I guess he decided to move in. Shortly after there was renovation talked about. I drew up a set of plans, or had one of my architect men do it, and they didn't accept that. It wasn't what they wanted.

Mr. SOLLERS. It wasn't what who wanted?

Mr. DONALDSON. It wasn't what the chairman wanted, and Larry Ward, I guess.

Mr. SOLLERS. Who told you that these plans weren't what they wanted?

Mr. DONALDSON. Pardon?

Mr. SOLLERS. Who told you that these plans were not what they wanted?

Mr. DONALDSON. Larry Ward and the chairman.

Mr. SOLLERS. And I take it, at that time you had an understanding that the chairman was indeed living in the house?

Mr. DONALDSON. Yes.

Mr. SOLLERS. How did this request for improvements come about, specifically? Who asked you for the improvements?

Mr. DONALDSON. Larry Ward.

Mr. SOLLERS. And what were the terms of the improvements to be? In other words, how were you to be compensated?

Mr. DONALDSON. Larry Ward and I had an agreement, and Doug Clark, President of Dineh, had an agreement. We would do this renovation at no cost, with the chance to buy the property when this administration was finished, at a reduced price below the original appraisal, which was $75,000. Any construction or renovation was not to be added on.

Mr. SOLLERS. So you would have an opportunity, if I understand you, to purchase the house without having tacked on the fair market value of any improvements that you made?

Mr. DONALDSON. That's right.

Mr. SOLLERS. How was this agreement memorialized?

Mr. DONALDSON. Mr. Clark needed a home, was the head of the construction company, and homes are very limited and we were looking forward for him.

Mr. SOLLERS. Let me just stop you there.

When I said memorialized, I meant did you write down this agreement?

Mr. DONALDSON. With Mr. Ward?

Mr. SOLLERS. Correct.

Mr. DONALDSON. No; verbal agreement.

Mr. SOLLERS. What recourse would you have had if Larry Ward had reneged on the deal?

Mr. DONALDSON. Nothing.

Mr. SOLLERS. Now, after these plans were determined to be not sufficient, what happened then?

Mr. DONALDSON. The next thing I knew there was a set of plans, and I was called back over there by Chairman MacDonald or Larry, I can't remember it's been 2 years ago, and they gave me a set of plans, this is what we want.

Mr. SOLLERS. Did you go ahead and do the work?

Mr. DONALDSON. Yes; I did.

Mr. SOLLERS. What renovations, specifically, did you make?

Mr. DONALDSON. We converted a two-car garage into a master bedroom, a bathroom, and a hot tub.

Mr. SOLLERS. Was this in August or September 1987?

Mr. DONALDSON. August.

Mr. SOLLERS. What would you estimate was the fair market value of those renovations, at the time?

Mr. DONALDSON. Around $40,000, $30,000, or $40,000.

Mr. SOLLERS. Was it your understanding that you were not going to be compensated at all at that time?

Mr. DONALDSON. That's right.

Mr. SOLLERS. Now, was it a factor in your decision to perform the renovations that Chairman MacDonald was living in the house?

Mr. DONALDSON. Yes.

Mr. SOLLERS. Was it a substantial factor?

Mr. DONALDSON. Yes.

Mr. SOLLERS. Did you, at that time, make any requests to Larry Ward to see if he would grease the skids, or at least find out whether or not there was work coming out of the Tribal Headquarters?

Mr. DONALDSON. Not at that time, no. It was 3 or 4 months later. We were out of work and I talked to Larry. I said, I need some work.

Mr. SOLLERS. Did you ever ask him to at least get some recognition for you from the chairman?

Mr. DONALDSON. Yes; I did. I asked for a list of the CIP projects that should be coming out.

Mr. SOLLERS. Is this the conversation 3 or 4 months later?

Mr. DONALDSON. Yes; that's right.

Mr. SOLLERS. Go ahead, tell us about that conversation.

Mr. DONALDSON. And in that conversation, Ward said he'd see what he could do. And about 1 week later, through the mail, I got a list of CIP projects that were proposed to be bid out. And they've never came out.

Mr. SOLLERS. Did Larry Ward tell you that he would inform the chairman of your work on the house?

Mr. DONALDSON. Yes; he did.

Mr. SOLLERS. Did he in fact tell you that he had told the chairman about your work on the house?

Mr. DONALDSON. The chairman knew we were working on the house.

Mr. SOLLERS. And he knew who you were?

Mr. DONALDSON. Yes.

Mr. SOLLERS. Do you have a personal relationship with Chairman MacDonald?

Mr. DONALDSON. Yes; I've known him 20 years.

Mr. SOLLERS. Have you ever provided him any direct payments?

Mr. DONALDSON. No.

Mr. SOLLERS. Now, did there come a time that you were asked to perform a second round of improvements?

Mr. DONALDSON. Yes.

Mr. SOLLERS. And when was that?

Mr. DONALDSON. That was in the last part of August in 1988.

Mr. SOLLERS. Now, how did that come about?

Mr. **Donaldson**. I got a call from the chairman's assistant, or aide, by the name of Jim Atcitty.

Mr. **Sollers**. Let me back you up for a second.

Did you first receive a phone call from Larry Ward?

Mr. **Donaldson**. Yes; I did.

Mr. **Sollers**. Tell us about that conversation.

Mr. **Donaldson**. Larry Ward asked me if I had talked to John Hunt, who's under the Navajo tribal chairman. I said, "no".

Mr. **Sollers**. Do you recall when you got this phone call?

Mr. **Donaldson**. Yes.

Mr. **Sollers**. When was it?

Mr. **Donaldson**. This was in July or August 1988.

Mr. **Sollers**. Mr. Ward asked you if you had spoken to John Hunt, is that right?

Mr. **Donaldson**. That's correct.

Mr. **Sollers**. Who's John Hunt?

Mr. **Donaldson**. He's an assistant to the chairman.

Mr. **Sollers**. What was your response?

Mr. **Donaldson**. No, I have not received or talked to him—not received a call or talked to Mr. Hunt.

Mr. **Sollers**. What else did Mr. Ward say?

Mr. **Donaldson**. He said, you need to contact Mr. Hunt. Which, in a couple of days I did, I called Mr. Hunt.

Mr. **Sollers**. Was this an odd phone call from Larry Ward?

Mr. **Donaldson**. Yes, it was.

Mr. **Sollers**. Why was it odd?

Mr. **Donaldson**. Because he didn't tell me what Mr. Hunt might want. I thought he should know.

Mr. **Sollers**. Did Mr. Ward say anything about contracts, that Mr. Hunt might have some contracts for you during the telephone conversation?

Mr. **Donaldson**. No; he didn't.

Mr. **Sollers**. He just said, have you seen John Hunt?

Mr. **Donaldson**. Right.

Mr. **Sollers**. Did he direct you to see John Hunt?

Mr. **Donaldson**. He instructed me to call Mr. Hunt.

Mr. **Sollers**. Did you do so subsequently?

Mr. **Donaldson**. Yes, I did.

Mr. **Sollers**. Did you talk to Mr. Hunt?

Mr. **Donaldson**. Yes.

Mr. **Sollers**. Tell us about that conversation.

Mr. **Donaldson**. When I contacted Mr. Hunt by phone, he said I—Mr. Hunt said, "I have instructed Community Development personnel to try to provide you with a couple small preschool contracts." And my reply was, "Mr. Hunt, I know the procedures of the Navajo Tribe. You have to go through the bidding process, the Commerce Department, and the Justice Department. I don't see how this can be arranged."

Mr. **Sollers**. What did Mr. Hunt say?

Mr. **Donaldson**. I didn't get a reply.

Mr. **Sollers**. How was the conversation left?

Mr. **Donaldson**. That was the last I've heard of it.

Mr. SOLLERS. Was it your impression when you left the Hunt meeting that you would be favorably considered for those contracts?

Mr. DONALDSON. No.

Mr. SOLLERS. What was your impression, then, from that conversation?

Mr. DONALDSON. I think they wanted more work done on the chairman's house.

Mr. SOLLERS. Do you think that Mr. Hunt was really going to see to it that you got those contracts?

Mr. DONALDSON. No.

Mr. SOLLERS. Now, do you know Larry Ward to be a personal friend of Chairman MacDonald?

Mr. DONALDSON. Yes.

Mr. SOLLERS. Do you know whether Mr. Ward has a substantial amount of influence with Chairman MacDonald?

Mr. DONALDSON. I wouldn't say a substantial amount. They're good friends. Beyond that, I don't know.

Mr. SOLLERS. Now, what happened after this conversation with Mr. Hunt, with regard to further improvements on the Ward house where Chairman MacDonald was living?

Mr. DONALDSON. All right.

One morning I got a call from Jim Atcitty, who was also an assistant to Navajo Tribal Chairman MacDonald, who said "could you come to the MacDonald residence, the chairman needs to see you." I said "yes."

Mr. SOLLERS. How long after the Hunt conversation was your phone call with Mr. Atcitty?

Mr. DONALDSON. As I recall, maybe a week.

Mr. SOLLERS. Did you respond to the request for Mr. Atcitty, and go to the Ward house?

Mr. DONALDSON. Yes.

Mr. SOLLERS. What happened then?

Mr. DONALDSON. When I got there Chairman MacDonald was there, with Mr. Atcitty, and two other fellows that I didn't know. And Chairman MacDonald presented me with a plan of renovation that he requested be done before fair time.

Mr. SOLLERS. What did these improvements include?

Mr. DONALDSON. This included building a fireplace, putting in some french doors, moving the wet bar. It wasn't a major project.

Mr. SOLLERS. Were there architect plans?

Mr. DONALDSON. Yes; there were.

Mr. SOLLERS. Do you know who the architect was?

Mr. DONALDSON. No, there was no name on the plans.

Mr. SOLLERS. Did you agree to do the work?

Mr. DONALDSON. Yes.

Mr. SOLLERS. Why?

Mr. DONALDSON. I felt like if I wanted contracts, I should do that, although we hadn't got any.

Mr. SOLLERS. Did you, in fact, perform the work?

Mr. DONALDSON. Yes, I did.

Mr. SOLLERS. The sum total of all the renovations that you performed on the Ward house was what, in dollar terms?

Mr. DONALDSON. I would say $60,000.

Mr. **Sollers**. That's $40,000 the first go around and $20,000 the second go around?

Mr. **Donaldson**. Yes.

Mr. **Sollers**. Did those preschool jobs ever come about?

Mr. **Donaldson**. No; they haven't yet.

Mr. **Sollers**. Did you get some work on the Tribal Headquarters?

Mr. **Donaldson**. Yes, we did work on the Tribal Headquarters, but we had to bid against outside bidders. We were very competitive.

Mr. **Sollers**. But did you also hear that the chairman had made it clear that he wanted to see you and Dineh Construction get some work?

Mr. **Donaldson**. Yes.

Mr. **Sollers**. How did you hear that?

Mr. **Donaldson**. I heard that through Roy Cleveland, and I also heard it through Pat Chee Miller, from PC&M.

Mr. **Sollers**. Now, did you have a specific conversation with Larry Ward after this second set of renovations about getting more work?

Mr. **Donaldson**. You know, I think I received the list of CIP projects after that, after I did the second phase of work.

Mr. **Sollers**. And did you receive that CIP list directly from Larry Ward?

Mr. **Donaldson**. Yes.

Mr. **Sollers**. And had he obtained that from the chairman's office?

Mr. **Donaldson**. I don't know where he got it.

Mr. **Sollers**. Did you get a preview of that list before it was published?

Mr. **Donaldson**. Yes.

Mr. **Sollers**. Did you also have a conversation with Pat Chee Miller concerning some instructions Mr. Miller had received about you and the CANDO project?

Mr. **Donaldson**. Yes.

Mr. **Sollers**. And tell us about that conversation.

Mr. **Donaldson**. This is a rather large job for out there, and the mechanical probably would run $375,000. Mr. Miller told me that the chairman advised he and Mr. Springer to try to negotiate with Dineh Construction to do the mechanical.

Mr. **Sollers**. Have you gotten that work yet?

Mr. **Donaldson**. No.

Mr. **Sollers**. Have you attempted to get Mr. Miller on record as to whether or not you're going to get that work?

Mr. **Donaldson**. Yes.

Mr. **Sollers**. Do you believe there's a tie-in between the chairman's instruction to Mr. Miller and the chairman's instruction on the Tribal Headquarters and the fact that you did the improvements on the house?

Mr. **Donaldson**. Yes.

Mr. **Sollers**. Just briefly, Mr. Donaldson, you've had substantial experience on the reservation, correct?

Mr. **Donaldson**. Yes.

Mr. **Sollers**. And you've seen the Bureau of Indian Affairs in operation up there, is that also true?

Mr. DONALDSON. That's true.

Mr. SOLLERS. What is your opinion with regard to whether or not the BIA should be present there on the reservation?

Mr. DONALDSON. I see a lot of overlapping in various departments, duplication of the BIA, and the Navajo Tribe, which looks like a waste. I see mismanagement there too. But the way the Tribe's been managed, I'm not sure they can handle it.

Mr. SOLLERS. Do you believe there should be some auditing presence on the reservation?

Mr. DONALDSON. Definitely.

Mr. SOLLERS. Mr. Chairman, that concludes my questions.

Senator DECONCINI. Thank you, Counsel.

Mr. Donaldson, on that remodeling and the work there, were you the prime contractor?

Mr. DONALDSON. No; we were the mechanical subcontractor.

Senator DECONCINI. You were the mechanical subcontractor.

Mr. DONALDSON. Yes.

Senator DECONCINI. Who did you contract with?

Mr. DONALDSON. The Navajo Tribe.

Senator DECONCINI. The Navajo Tribe did the job then.

Mr. DONALDSON. Yes.

Senator DECONCINI. Was Mr. Paddock there?

Mr. DONALDSON. Yes.

Senator DECONCINI. What was his involvement?

Mr. DONALDSON. He was construction manager.

Senator DECONCINI. So he supervised your work?

Mr. DONALDSON. Yes; our contracts went through Mr. Paddock.

Senator DECONCINI. How much was your contract for, do you remember?

Mr. DONALDSON. Less than $70,000.

Senator DECONCINI. When you had this verbal option from Mr. Ward to purchase the property, did it concern you that you didn't have any written instrument?

Mr. DONALDSON. No; it did not.

Senator DECONCINI. Why not, because you're such a good friend, or you trust him so much?

Mr. DONALDSON. Both. I've known Larry for approximately 16 years, and I trust him fully.

Senator DECONCINI. And what was the arrangement, how much under appraised value was it going to be, or was that going to be negotiated?

Mr. DONALDSON. We felt like we could buy it for around $60,000, $65,000.

Senator DECONCINI. That's the price you talked to him about?

Mr. DONALDSON. Yes.

Senator DECONCINI. Not counting the improvements?

Mr. DONALDSON. Yes.

Senator DECONCINI. Which would have been a good investment for you?

Mr. DONALDSON. Yes, that's right.

Senator DECONCINI. Do you still consider that as a transaction that exists?

Mr. DONALDSON. Yes.

Senator DECONCINI. I mean an agreement with Mr. Ward?

Mr. **Donaldson**. Yes; I've talked to Mr. Ward since then. He says draw up a contract, I'll sign it, to that effect.

Senator **DeConcini**. So you feel you're secure?

Mr. **Donaldson**. Yes; I do.

Senator **DeConcini**. Have you had any other business dealings with Mr. Ward?

Mr. **Donaldson**. Like I say, I took care of the residence there 4 years. If there was any charges for maintenance and stuff, they always paid well.

Senator **DeConcini**. You didn't do anything else for Mr. Ward?

Mr. **Donaldson**. No.

Senator **DeConcini**. And your experience on the reservation—first of all, have you done work on other reservations?

Mr. **Donaldson**. Yes.

Senator **DeConcini**. And which ones have you worked on?

Senator **DeConcini**. Laguna Acoma, down by Sante Fe, New Mexico, the Zuni Reservation, the Ute Reservation in Colorado.

Senator **DeConcini**. And you indicated that things took a long time to happen and that there were many approaches by people wanting gratuities and gifts and what-have-you. Was that true on other reservations, as well?

Mr. **Donaldson**. Well, I haven't worked there as much, so I couldn't say so. I've primarily been on the Navajo Reservation most of the time.

Senator **DeConcini**. Is this a widespread practice on the Navajo Reservation?

Mr. **Donaldson**. Yes.

Senator **DeConcini**. What do you attribute that to?

Mr. **Donaldson**. I could see a great change there in 1983 when the Zah administration took over.

Senator **DeConcini**. What change did you see?

Mr. **Donaldson**. Not Mr. Zah, basically I think he's very honest there. A lot of the key people under there were wanting favors done and kickbacks and stuff. And we just pulled away. We didn't get a lot of work.

Senator **DeConcini**. And before that?

Mr. **Donaldson**. Not as much, no.

Senator **DeConcini**. Not as much, but some.

Mr. **Donaldson**. No, minor stuff.

Senator **DeConcini**. And since the election in 1986, is it more or less?

Mr. **Donaldson**. I've stayed away from it——

Senator **DeConcini**. So you don't know?

Mr. **Donaldson**. That's right.

Senator **DeConcini**. Do you think the overall economic conditions of the reservation have something to do with this, or do you have an opinion? What causes it?

Mr. **Donaldson**. I would say that would be part of it, yes.

Senator **DeConcini**. What other reasons do you think that happens to be true?

Mr. **Donaldson**. Well, there's not laws to take care of these things if it exists.

Senator **DeConcini**. There's no laws for enforcement?

Mr. DONALDSON. Yes; if it's tribal money. There should be laws initiated to take care of these things.

Senator DECONCINI. So in other words, it might be against the law to give a tribal official tickets or gifts——

Mr. DONALDSON. The Tribal Code, if I read it correctly, is 30 days and $500 fine. Nothing.

Senator DECONCINI. Well, the Tribal Code, they've adopted an ethical code that calls for 180 days maximum, but it's a misdemeanor. And I don't know whether it's enforced, perhaps it is.

I have no further questions.

Senator McCain, do you have any questions?

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Donaldson, you mentioned that you and your wife have a combined income of about $50,000 a year?

Mr. DONALDSON. Yes; that's through this company.

Senator MCCAIN. The improvements that you made on the home of Mr. Ward's that Chairman McDonald was living in were worth about $60,000?

Mr. DONALDSON. Yes, sir.

Senator MCCAIN. How could you afford that?

Mr. DONALDSON. We couldn't. We're in the red now in the company. We're down $130,000 or $140,000 in the red the last year.

Senator MCCAIN. Well, wouldn't that indebtedness motivate you to seek repayment for your efforts?

Mr. DONALDSON. No; because I made an agreement with Mr. Ward that I would do it. But the work has been very slow. Our company, it's the first time since it's been formed, is down $130,000, $140,000. It's a small company.

Senator MCCAIN. When you were asked to make those improvements, did you want to do it, given the fact that you have a combined income of $50,000 a year?

Mr. DONALDSON. No; I didn't.

Senator MCCAIN. Then why were you motivated to do so?

Mr. DONALDSON. I felt that it may help us to get some contracts. We're the only firm there under the Preference law that is capable of doing mechanical work on the reservation, and I thought that maybe the chairman would guide projects toward us.

Senator MCCAIN. And that really didn't happen?

Mr. DONALDSON. No; it didn't.

Senator MCCAIN. You mentioned in your testimony that in the last couple of years economic conditions on the reservation have deteriorated?

Mr. DONALDSON. Yes.

Senator MCCAIN. How do you account for that?

Mr. DONALDSON. Maybe overspending for various things for the Navajo Tribe.

Senator MCCAIN. For example?

Mr. DONALDSON. Big Boquillas Ranch. I've been told that money was taken out of CIP accounts to purchase the ranch. I don't know.

Senator MCCAIN. Have you heard of the programs for economic development that have been instituted by this present administration on the Navajo Reservation?

Mr. DONALDSON. There's very little going on. The program is there, yes, I've heard of them, but they've never been initiated.

Senator McCain. You've not seen any——

Mr. Donaldson. Nothing.

Senator McCain [continuing]. Concrete results of the economic development program?

Mr. Donaldson. No; I haven't.

Senator McCain. And you travel extensively through the reservation and you have made many friends over the years?

Mr. Donaldson. Yes.

Senator McCain. And how is this economic development program viewed by the average person that lives on the reservation?

Mr. Donaldson. There is no economic development program going on out there. There's nothing going on on the Navajo Reservation. This place is going backwards.

Senator McCain. And you believe that it's because of overspending on the part of the Tribe.

Mr. Donaldson. Part of it, yes, and the trust land, which outside entities will not move in, because of the trust land. One administration signs a contract, the next administration comes in and wants to void it. Who's going to invest millions of dollars with something like that.

Senator McCain. So the business people that you know are very reluctant to locate on the reservation?

Mr. Donaldson. Yes.

I talked to two committee members of the Economic Development Committee, outside Anglo people, businessmen, well qualified. They were told the two complaints of the Navajo Reservation for getting outside industry were the Justice Department of the Navajo Tribe and the trust land.

Senator McCain. You said in your testimony that you need more laws, is that correct?

Mr. Donaldson. Yes; that's true.

Senator McCain. It seems to me that one of those laws would require some kind of a guarantee to a businessman on the reservation that his contract won't be cancelled in the event of a change in Administration.

Mr. Donaldson. Right. I would say so.

Senator McCain. Well, I wish you well, and I hope you are compensated for your work.

Mr. Donaldson. Thank you.

Senator McCain. And I hope that your fortunes are better in the future.

I think it might be appropriate at this time, Mr. Chairman, to repeat what you and I have discussed on several occasions. And that is what we're attempting to do here is to improve the economic condition of tribal members throughout this Country. We are attempting to do it on the Navajo Reservation, the Zuni Reservation, the Cabazon Reservation, on every one. We find that many of these problems, in the course of our investigation, are endemic throughout the reservations, which is, partially due to misguided government policies, as well as the inability of the tribes to encourage the kind of economic development that's needed and coupled with benign neglect on the part of the Congress and the Government of the United States.

Would you agree with all of that, Mr. Donaldson?

Mr. **Donaldson**. Yes, I do.

Senator **McCain**. Thank you.

Thank you, Mr. Chairman.

Senator **DeConcini**. Senator McCain, thank you very much.

Mr. Donaldson, thank you. It certainly is encouraging to hear someone who resisted, by your testimony, the temptations that have been laid before us in the last 2 days, and my compliments for that. And as Senator McCain says, I hope you do get paid for your work.

Thank you, sir.

Mr. **Donaldson**. You're welcome. Thank you.

Senator **DeConcini**. The committee will stand in recess until 10 a.m. Monday morning.

[Whereupon, at 3:20 p.m., the special committee was recessed, to reconvene at 10 a.m. on Monday, February 6, 1989.]

FEDERAL GOVERNMENT'S RELATIONSHIP WITH AMERICAN INDIANS

MONDAY, FEBRUARY 6, 1989

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
SPECIAL COMMITTEE ON INVESTIGATIONS,
Washington, DC.

The special committee met, pursuant to notice, at 10:05 a.m. in room 216, Hart Senate Office Building, Hon. Dennis DeConcini (chairman of the special committee) presiding.

Present: Senators DeConcini and McCain.

Staff present: Kenneth Ballen, Andrew Klingenstein, John Brandolino, and J. Sedwick Sollers III.

Senator DECONCINI. The Special Committee on Investigations of the Senate Select Committee on Indian Affairs will come to order.

At this time I will yield to cochairman, my distinguished colleague from Arizona, Senator McCain.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, COCHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator McCAIN. Thank you Mr. Chairman.

As we begin our second week of hearings, I think it is important to quickly summarize our work from last week and point out the objectives of these hearings again.

Last week we heard descriptions of conflict of interest which is inherent in the Federal Government's role and performance in fulfilling the trust responsibility to American Indians. We also heard testimony about housing contractors who line their pockets with money intended to pay for housing that is desperately needed on the reservations. And finally we heard how non-Indian businesses have knowingly sought and obtained contracts through Indian preference programs that have denied Indians the work opportunities and legitimate profits that Congress intended when these programs were enacted.

At first glance, these issues, and those that will be addressed this week, seem quite diverse. However, running through each of the items on the committee's agenda is the same discouraging theme—American Indians are consistently denied the basic economic opportunity and legal protection they deserve as citizens of this Nation.

The topic of our hearings for today and tomorrow will be corruption among elected officials in tribal government. As Chairman

DeConcini stated in his opening remarks last week, we decided at the start of this investigation 8 months ago that we would pursue corruption wherever it was found. We felt that to expose corruption and abuse in the Federal Government while neglecting corruption and abuse in tribal governments would be a betrayal of the trust placed in us by the U.S. Senate, the American people, and, most of all, by American Indians—American Indians who are not members of tribal governments, but those American Indians who are not receiving the benefits that they are guaranteed by law, because of fraud, mismanagement, or corruption on the part of any government official.

Most Americans may not fully understand the nature of modern tribal governments. Tribal officials of today are not the traditional tribal elders of the past, but they are officials who preside over tribal governments which are sovereign bodies in the fullest sense. Their leaders are duly elected public officials, their budgets are supported not only by Federal funds, but also by their own revenues. The Federal Government relates to tribal governments on a government-to-government basis, a philosophy which Chairman DeConcini and I totally support, as it would with any other sovereign entity. In short, tribal governments are not unlike State, county, and municipal governments.

In the course of our investigation of fraud in minority contracting, we repeatedly heard allegations of corruption by tribal government officials. Because these allegations concern duly elected public officials, we investigated them thoroughly. As you will hear over the course of the next 2 days, some of our findings are extremely troubling. We have found that unlike Federal, State, or local government officials, elected tribal leaders are not fully covered by Federal criminal statutes concerning corruption. Today and tomorrow, the committee will hear testimony which points to a serious problem that needs to be addressed, perhaps through the passage of additional Federal laws. Later in the week when we hear from several law enforcement officials we will examine whether Congress should expand the laws concerning bribes, graft, kickbacks, embezzlement, gratuities, and conflicts of interest to cover Indian governmental officials.

Mr. Chairman, people who have visited a reservation in our State or elsewhere in the country know many of the reasons for this investigation and these public hearings. Indian reservations in this country are home to some of the most tragic misery, hopelessness, and despair to be found in the world today. We are committed to exposing the problems that have created this deplorable situation and when the problems have been fully detailed, we will focus our attention on the effort to make recommendations that result in a real and positive change for American Indians, the people that represent the richest culture and heritage this continent has to offer.

In pursuing the many directions of this investigation, we have not lost sight of our objective which is to expose any and all waste, mismanagement, or corruption that is preventing American Indians from receiving the benefits and opportunities they so desperately need and richly deserve.

And finally Mr. Chairman, I would reemphasize what you and I have discussed. Approximately 20 percent of these hearings will be devoted to the issue of tribal corruption. The other 80 percent will be devoted to the problems with housing, with Indian health, with Federal contracting, and with the overall management by the Bureau of Indian Affairs, the Indian Health Service, HUD, and others, and the clear dereliction of their duties in carrying out their responsibilities, not only in the recent past, but for the last 200 years.

Thank you, Mr. Chairman.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA, CHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator DeConcini. Thank you, Senator McCain.

I associate myself with that excellent statement and want to only add that investigations such as this are not pleasant experiences either for those who are investigated or those who conduct the investigations. We are charged with the responsibility by the Senate and the Select Committee on Indian Affairs to review complaints and problems arising in Indian country and related to Indian programs. Because of the unique situation that the Federal Government spends somewhere in the neighborhood of $3 billion on various Indian programs, it is the taxpayer who is putting forth its hard earned dollars to attempt to find some solution to some of the problems that are among our native Americans. We have a sovereign relationship, I believe, that can always be subject to some differing interpretations, but, indeed, as Senator McCain points out, it is very similar to State government and local governments, as it is to tribal governments. They have certain inalienable rights. They also have certain obligations and responsibilities that go beyond their own jurisdictions.

We will proceed with these hearings this week and the week of February 20. After that, our investigation will continue as it is now into Indian housing, Indian health, and natural resources.

One of the tremendous problems in the area of natural resources is the quantity and the magnitude of the particular problem of oil and gas and timber leases and management thereof. We have found that this is a very painstaking investigation, requiring many, many hours of interviews, depositions, and hundreds of subpoenas. We will proceed with that and in the spring we will involve ourselves with hearings as they relate to that issue.

As Senator McCain pointed out, this week our hearings will touch on four additional issues—corruption among the elected officials of tribal governments, which we will hear today and tomorrow; the infiltration of Indian gaming operations by organized crime, which we will hear on Wednesday; law enforcement on the reservation, and child sexual abuse in BIA schools and elsewhere.

Today and tomorrow we will hear testimony concerning leadership of the Navajo Nation. In early January of this year the Special Committee on Investigations subpoenaed the Chairman of the Navajo Tribal Council, Mr. Peter MacDonald, Sr., to appear before the special committee. After consultation with his attorney, Chairman MacDonald and his lawyer informed us he would invoke his fifth amendment privilege. Chairman MacDonald subsequently sent us a one sentence letter dated January 12, 1989, which reads as follows:

> This will serve to notify you that pursuant to the advice of my counsel, if subpoenaed to testify before your committee either in deposition form or at hearings before the full committee, I will invoke my Fifth Amendment privilege against self-incrimination.
>
> Sincerely,
>
> PETER MACDONALD, Sr.,
> Chairman.

To date all grants of immunity voted upon by the special committee have been approved in advance by the Department of Justice. The Department of Justice did object, however, to granting Chairman MacDonald immunity. The Special Committee has therefore decided not to compel Chairman MacDonald to testify by granting him limited or use immunity. He may come and testify as a witness under oath without immunity, but as he has indicated and unless he changes his mind, to have him come and do so and invoke the Fifth Amendment would certainly be useless.

Our first witness this morning will be Mr. Drex Hansen, President of American West Aircraft Corporation of Houston, Texas. He will be followed by Mr. Eugene "Pete" Twardowicz, Investigator for the Special Committee on Investigations.

This afternoon, starting at 2 p.m., we will hear testimony from Mr. Peter MacDonald, Jr.

[Witness sworn.]

STATEMENT OF DREX HANSEN, PRESIDENT, AMERICAN WEST AIRCRAFT CORP., HOUSTON, TX

Senator DECONCINI. Would you please state your name and your residence and Mr. Sollers will commence with the questioning.

Mr. HANSEN. My name is Drex Hansen, resident in Houston, Tx.

Mr. SOLLERS. Good morning, Mr. Hansen.

Mr. HANSEN. Good morning.

Mr. SOLLERS. Mr. Hansen, how are you employed?

Mr. HANSEN. I am president of American West Aircraft.

Mr. SOLLERS. Where is American West located?

Mr. HANSEN. Houston, TX.

Mr. SOLLERS. What kind of business is American West?

Mr. HANSEN. We are a jet sales company and modification center.

Mr. SOLLERS. Now, Mr. Hansen, do you know Peter MacDonald?

Mr. HANSEN. Yes, sir.

Mr. SOLLERS. Who is he?

Mr. HANSEN. Chairman of the Navajo Nation.

Mr. SOLLERS. How did you first meet Mr. Peter MacDonald?

Mr. HANSEN. I was approached in January 1986 to acquire aircraft for the Navajo Nation by the Finance Administration Office.

Mr. SOLLERS. And when was it specifically that you first met Mr. MacDonald?

Mr. HANSEN. In March 1987.

Mr. SOLLERS. Where was that, sir?

Mr. HANSEN. Window Rock, AZ.

Mr. **Sollers**. What were you doing in Window Rock at the time?

Mr. **Hansen**. I had taken a Lear 25D to Window Rock to show the Finance Administration and Chairman MacDonald.

Mr. **Sollers**. Now, at that time was the tribe looking into the purchase of certain planes from you?

Mr. **Hansen**. Yes, sir.

Mr. **Sollers**. As a result or pursuant to those negotiations, did they ask you for demonstrations?

Mr. **Hansen**. Yes, they did.

Mr. **Sollers**. Explain how that came about.

Mr. **Hansen**. They were not exactly sure what type of airplanes they were looking at. They were considering 727 Boeings. In fact, that's what they requested. I analyzed their needs after a meeting in Tucson, by the way, which occurred prior to this meeting of MacDonald—analyzed their needs and recommended a much smaller airplane to them because they could not support the 727 theory.

Mr. **Sollers**. Now, did the tribe, and specifically Peter MacDonald, ask you for some charter flights?

Mr. **Hansen**. Yes; they did.

Mr. **Sollers**. Did you have negotiations or discussions with them concerning whether or not they would actually pay for those flights?

Mr. **Hansen**. Yes; we did and it was very much pointed out that our involvement was to put employment on the reservation through a modification center for jet aircraft. In that transaction we also agreed to provide them an airplane or whatever airplanes they needed at a very small margin. However, they agreed up front to pay any expenses involved in demonstrating, delivering, or whatever of these aircraft.

Mr. **Sollers**. Was Chairman MacDonald present when the tribe agreed to pay for these charter flights?

Mr. **Hansen**. On several occasions he was present.

Mr. **Sollers**. Did there come a time that Peter MacDonald began to take charter trips arranged by you?

Mr. **Hansen**. Yes, sir.

Mr. **Sollers**. Did you, in fact, fly the Chairman on several occasions?

Mr. **Hansen**. Yes; I did.

Mr. **Sollers**. Approximately how many trips were arranged by your company for Mr. MacDonald?

Mr. **Hansen**. Seven or eight trips.

Mr. **Sollers**. That was during what timeframe, sir?

Mr. **Hansen**. Almost exclusively June and July 1987.

Mr. **Sollers**. Did several of the trips revolve or center around commencement ceremonies for the chairman's daughter?

Mr. **Hansen**. Yes; they did.

Mr. **Sollers**. Where were those commencement ceremonies?

Mr. **Hansen**. In Boston, I believe. She graduated from Harvard.

Mr. **Sollers**. This is Chairman MacDonald's daughter?

Mr. **Hansen**. Yes, sir.

Mr. **Sollers**. Who was on the trips that revolved around the commencement ceremonies?

Mr. HANSEN. The chairman, his wife, his younger daughter, a friend of the family—probably his daughter's friend, a young girl—and then we brought back the graduate.

Mr. SOLLERS. What was the cost of these trips?

Mr. HANSEN. Right around $50,000.

Mr. SOLLERS. Did you say $50,000?

Mr. HANSEN. Approximately.

Mr. SOLLERS. That would be the aggregate for how many one-way Lear jet trips?

Mr. HANSEN. Four one-way Lear jet trips.

Mr. SOLLERS. Those were on what dates, sir?

Mr. HANSEN. June 28, 29, and July 1, 1987.

Mr. SOLLERS. With regard to one of those trips—or one round trip on a Lear jet—was it the case that the chairman had requested transportation back to Window Rock while the rest of the family remained in Boston?

Mr. HANSEN. Yes; it was.

Mr. SOLLERS. Did you offer the chairman a different, much less expensive option?

Mr. HANSEN. Yes; I did.

Mr. SOLLERS. What was that option?

Mr. HANSEN. I had my office arrange for a first-class, round-trip seat on United from Boston to Denver. We repositioned the Lear jet from one part of Colorado to Stapleton to meet his flight, take him to Window Rock, wait for him, return him to Denver, put him back on the 747 back to Boston.

Mr. SOLLERS. What would have been the approximate cost of transportation on the first-class United flight with a Lear jet to meet him for a small trip up to Window Rock?

Mr. HANSEN. About $2,500 dollars.

Mr. SOLLERS. Did the chairman decline that option?

Mr. HANSEN. Yes; he did.

Mr. SOLLERS. Instead, what did he ask for?

Mr. HANSEN. He asked for something that was more meaningful to his demeanor or stature—a Lear jet all the way.

Mr. SOLLERS. How much was the cost of that Lear jet?

Mr. HANSEN. It was $16,095.

Mr. SOLLERS. And as you have testified with regard to the four trips that were necessary for this commencement ceremony, the cost was approximately $50,000 in aggregate?

Mr. HANSEN. Yes, sir.

Mr. SOLLERS. Did you submit a bill to the tribe for these trips?

Mr. HANSEN. Numerous times we did.

Mr. SOLLERS. Now during one of these trips did you overhear a conversation between the chairman and upper level tribal officials?

Mr. HANSEN. Yes, sir.

Mr. SOLLERS. What did that conversation relate to?

Mr. HANSEN. The acquisition of a ranch.

Mr. SOLLERS. What do you recall being said?

Mr. HANSEN. His finance people were telling him about the transaction they had negotiated—what would have been an acceptable negotiation, I guess, is a better term—and one of these people was recommending very vigorously against this acquisition.

Mr. **Sollers**. Did you know what ranch they were referring to at the time?

Mr. **Hansen**. No; I did not. This was on June 28, 1987.

Mr. **Sollers**. Please continue. How did the conversation go?

Mr. **Hansen**. The Finance Administrator was recommending very vigorously against this transaction as it was presently structured. Another aide to the chairman was not so negative but not very positive.

Mr. **Sollers**. Were these individuals raising problems with the transaction?

Mr. **Hansen**. They were identifying problems with regards to the paper trail, I believe, was mentioned.

Mr. **Sollers**. And what, if anything, did you hear the chairman respond to those objections?

Mr. **Hansen**. After a couple of moments of thought he just turned around and said "screw 'em, do it anyway."

Mr. **Sollers**. Mr. Hansen, you stated that you submitted some bills for these charter flights, is that true?

Mr. **Hansen**. Yes, sir.

Mr. **Sollers**. Did you receive some payments?

Mr. **Hansen**. Yes; we did.

Mr. **Sollers**. Did that leave an outstanding balance?

Mr. **Hansen**. Yes; it did.

Mr. **Sollers**. What was the outstanding balance?

Mr. **Hansen**. It was $89,269.48.

[See p. 322.]

Mr. **Sollers**. Did there come a time in December 1987 that you had further negotiations with representatives of the Navajo Tribe for the purchase of some King airplanes?

Mr. **Hansen**. Yes, sir.

Mr. **Sollers**. Did you have a conversation on the telephone during which you were asked specifically for a kickback?

Mr. **Hansen**. Yes, sir.

Mr. **Sollers**. What was that request?

Mr. **Hansen**. The request was in the form that if we wanted to sell the Navajos airplanes we would pay an undescribed person $45,000. If we agreed to, they would then give us the details on who to give the money to.

Mr. **Sollers**. Was that a discount or was that a specific payment to an individual?

Mr. **Hansen**. That was a cash payment to be made just ahead of the transaction.

Mr. **Sollers**. So, in other words, an advance kickback?

Mr. **Hansen**. Yes, sir.

Mr. **Sollers**. What, if any, involvement did the chairman have with this request, to your knowledge?

Mr. **Hansen**. It was relayed to me that it was a directive of his.

Mr. **Sollers**. Did you decide to make such a kickback?

Mr. **Hansen**. I decided not to make it.

Mr. **Sollers**. Did you subsequently learn that the Navajos purchased identical King, identical to the ones that you were offering for sale, from another seller?

Mr. **Hansen**. With one correction—they weren't identical, they were the same airplanes.

Mr. SOLLERS. So were you acting basically as broker?

Mr. HANSEN. Yes, sir.

Mr. SOLLERS. Did you subsequently learn that they did, in fact, purchase the same planes from another seller or through another broker?

Mr. HANSEN. Yes.

Mr. SOLLERS. From whom did they purchase the planes?

Mr. HANSEN. They bought them directly from the owner. The transaction was arranged by Maxfly Aviation in Florida.

Mr. SOLLERS. What did you learn about the amount of money they paid for the planes?

Mr. HANSEN. The wire transfers, as relayed to me, were approximately a one-half of a million dollars more than what we had offered the planes for.

Mr. SOLLERS. Did you draw any conclusion from the fact that the Navajos went to another entity and paid more for the same planes?

Mr. HANSEN. Somebody needed more than $45,000, it sounds like.

Mr. SOLLERS. So, in fact, did you have any more negotiations with the Navajos about selling them planes at that point?

Mr. HANSEN. No; I did not.

Mr. SOLLERS. Where did that leave you with regard to your outstanding $89,000 balance on the charter fees?

Mr. HANSEN. Just left with the balance on the books for the Navajos—re-evaluating our credit procedures.

Mr. SOLLERS. What, if anything, did you do in an attempt to collect this $89,000?

Mr. HANSEN. I called the chairman of the finance dpartment for the Navajo Nation and had several discussions with him relating to my proposed activities if I did not get some immediate action from the Navajos in the way of payment.

Mr. SOLLERS. You say your proposed activities. What did you tell the Navajos that you would do if they did not pay the outstanding balance of $89,000?

Mr. HANSEN. I described a meeting whereby the FBI had been out to see me about the invoices, wire transfers, et cetera, that had occurred the previous year. I also described that I had answered their questions completely but that I had not volunteered any information, but I was getting ready to start volunteering what I knew about their activities with regard to the airplanes and the ranch.

Mr. SOLLERS. How did the Navajos respond to that?

Mr. HANSEN. They sent their attorney general, their finance director, and the personal aide to the chairman to Texas 2 days later, on a Saturday. We had a 5-minute meeting in my office.

Mr. SOLLERS. What occurred at that meeting?

Mr. HANSEN. They agreed to pay a discounted amount of the $89,000. We discounted it $25,000 and they agreed to pay within 5 working days.

Mr. SOLLERS. Well, initially at the meeting what occurred? Did they make you an offer?

Mr. HANSEN. Yes; they initially offered me $15,000 to close the file and not to be a bother to them, to quote them.

Mr. SOLLERS. What did you tell them you would do at that time?

Mr. Hansen. I told them I would discount it $25,000 and that they had about 2 or 3 minutes to decide.

Mr. Sollers. What were you going to do if they did not come up with more money?

Mr. Hansen. I was going to call the special agents that had been out to see me about the Navajos several weeks earlier.

Mr. Sollers. Specifically, what were you going to be telling the special agents from the FBI?

Mr. Hansen. About their request for the kickback, all the names and parties involved, and there were numerous ones.

Mr. Sollers. Did you also tell representatives of the Navajo Nation that you would be discussing the conversations you had overheard with regard to a ranch?

Mr. Hansen. Yes, sir.

Mr. Sollers. At that time did you know what ranch they were talking about?

Mr. Hansen. At that time I did. However, when I originally heard the conversations in June 1987 I did not.

Mr. Sollers. You had subsequently learned how?

Mr. Hansen. By way of faxes. I had a lot of newspapers faxed to me and I was interviewed by three or four newspapers in Arizona, the Wall Street Journal, et ctera, over the past 1½ years.

Mr. Sollers. Had you learned that it was the Big Boquillas Ranch that they were discussing?

Mr. Hansen. Yes, sir; I think it was on July 7 that I got some faxes to that effect.

Mr. Sollers. Did you inform the Navajo representatives that you would be discussing those conversations about the Big Boquillas Ranch with the FBI?

Mr. Hansen. Yes; I did.

Mr. Sollers. After you told them that, did they come up with more money?

Mr. Hansen. It took them approximately 2 minutes to agree to my terms completely, put it in writing and leave.

Mr. Sollers. Did you subsequently receive some funds from the Navajo Nation for the charter trips?

Mr. Hansen. Yes; I did.

Mr. Sollers. That was in what form?

Mr. Hansen. It was a wire transfer.

Mr. Sollers. That wire transfer was in the amount of what?

Mr. Hansen. It was $64,269.48, I believe.

Mr. Sollers. And that wire transfer covered the personal trips taken by Chairman MacDonald and his family to Boston, is that true?

Mr. Hansen. Yes, sir.

Mr. Sollers. The wire transfer was from what entity?

Mr. Hansen. It originated from the Navajo Nation through Founders Bank in Phoenix, through United Bank in Phoenix to my bank in Houston.

Mr. Sollers. We have up on the easel what appears to be a copy of a wire transfer. Is that, in fact, a copy of the wire transfer that you received from the Navajo Nation?

[See p. 323.]

Mr. Hansen. Yes, sir.

Mr. Sollers. To your knowledge, it is your understanding that it came from tribal funds?

Mr. Hansen. I'm sure that it did.

Mr. Sollers. And, in fact, does the wire transfer say that the originating party is the Navajo Nation?

Mr. Hansen. Yes; it does. All of the wire transfers did say the Navajo Nation on them, by the way.

Mr. Sollers. Mr. Chairman, that concludes my questions.

Thank you, Mr. Hansen.

Senator DeConcini. Mr. Hansen, when you had your 5-minute meeting, or the short meeting, who was there?

Mr. Hansen. Mr. Reardon, who is a deputy attorney general and personal friend of the chairman; his finance manager or chief finance administrator, William Morgan; and an aide to the chairman, Piochie is the name that I know him by.

Senator DeConcini. Was any reference made to Chairman MacDonald at that meeting?

Mr. Hansen. I'm sure there was.

Senator DeConcini. Do you recall what it was?

Mr. Hansen. I recall the references that I made. I don't recall what their responses were, but——

Senator DeConcini. What reference did you make?

Mr. Hansen. Regarding the transaction on the ranch, the questions that had been put to me by the FBI were pretty vague but I answered them. However, I mentioned that I had overheard the chairman discussing the acquisition prior to it and that I recalled the details vividly and that I would be volunteering that information shortly.

Senator DeConcini. Did you eventually meet with FBI agents after the meeting in the settlement?

Mr. Hansen. No; I did not. I have had a couple of telephone calls, but I have not met with them.

Senator DeConcini. Your knowledge of the tribe's purchase of the airplanes from Maxfly Aviation in Florida, how did you come about that knowledge?

Mr. Hansen. We're in an industry smaller than brain surgeons, so it is a matter of moments before we know what happens.

Senator DeConcini. In the matter of moments in the availability of such information, did you also come across what was reputed to be the price for the airplanes?

Mr. Hansen. I contacted some people I know in the finance administration office in Window Rock and the transfers that I was told about were approximately $3.7 million.

Senator DeConcini. That was $3.7 million for what?

Mr. Hansen. For two King Air 200s, 1985 models, as I recall.

Senator DeConcini. And how long have you been in the business you're in?

Mr. Hansen. About 19 years.

Senator DeConcini. And you have sold King Airs during that period of time?

Mr. Hansen. I, in fact, sold their King Air.

Senator DeConcini. The one that they have now?

Mr. Hansen. The one that they had when I met them.

Senator DeConcini. They no longer have that King Air?

Mr. HANSEN. I sold that in September 1987.

Senator DECONCINI. What did that one plane cost, do you recall?

Mr. HANSEN. I sold it for $650,000 to a gentleman in England. They had paid about $1,050,000 for it 3 years earlier.

Senator DECONCINI. The Navajo Nation had paid $1,050,000?

Mr. HANSEN. Through a lease-purchase they did this. They get around acquisitions by leasing equipment with a purchase on the other end.

Senator DECONCINI. On the tail end, yes. How long did they own that plane?

Mr. HANSEN. Approximately 3 years and 6 months.

Senator DECONCINI. So in your judgment the purchase of the two King Airs, model 200, 1985 models, at $3.7 million—had you offered them two King Airs?

Mr. HANSEN. I had offered them these very same airplanes.

Senator DECONCINI. These same airplanes.

Mr. HANSEN. Yes.

Senator DECONCINI. At what price?

Mr. HANSEN. Approximately $3.25 million.

Senator DECONCINI. About $3.25 million. And you were able to confirm that they paid $3.7 million?

Mr. HANSEN. I have heard that they since paid a few hundred thousand dollars more for some other equipment they may or may not have received—up to $1 million more. So, $4.7 million is the outside number that I have been told, for the airplanes and some additional equipment that they may or may not have gotten. Nobody seems to know.

Senator DECONCINI. When you received the telephone call which you made reference to when questioned by Mr. Sollers relating to kickbacks, do you know who you were talking to at the time?

Mr. HANSEN. Yes, sir.

Senator DECONCINI. Who was it?

Mr. HANSEN. William Morgan. Actually I initiated this call.

Senator DECONCINI. William Morgan? You called him?

Mr. HANSEN. I called him to find out if they were going to buy any airplanes and, if so, what did they actually want.

Senator DECONCINI. When did that occur? I think you have stated that but I did not get it.

Mr. HANSEN. It was about December 17, 1987.

Senator DECONCINI. He at that time indicated that it would be necessary for you to advance $45,000?

Mr. HANSEN. That was the number that was talked about. After what actually occurred when they bought the planes, it must have been $450,000, though.

Senator DECONCINI. But he mentioned $45,000 then?

Mr. HANSEN. That was the number that was mentioned to me on numerous occasions.

Senator DECONCINI. He did not tell you who it was going to go to?

Mr. HANSEN. The inference was that he would take care of giving it to whomever it needed to go to.

Senator DECONCINI. What makes you believe that any of the funds would go to Chairman MacDonald?

Mr. HANSEN. I do not believe that it actually would have gone directly to him. I do believe that he would have benefitted by it and that he seemed to be really in control of what these people did and how they went about it.

Senator DECONCINI. How did you come to that conclusion?

Mr. HANSEN. I dealt with them for 2 years.

Senator DECONCINI. With the chairman?

Mr. HANSEN. With the chairman and his top advisors. I had them in Houston on four or five different occasions, spent the evening with them, spent a lot of time with these people, and I also was extending a large amount of credit to them and I was being warned by people in my industry about it and so I was trying to keep a lot of information available so that if it got to be a problem then I would have some recourse for my company.

Senator DECONCINI. You mentioned that you had been warned by members of your industry. What do you mean by that?

Mr. HANSEN. When the chairman was in office 5 or 6 years prior to this time, he'd left some open bills with some of my contemporaries for Lear Jet travel.

Senator DECONCINI. Have you sold airplanes or equipment or leased to any other reservation or tribal government?

Mr. HANSEN. No; I have dealt with others and worked down to where transactions took place. We did not actually in the end sell the equipment.

Senator DECONCINI. Based on the experience that you had in this case, would you be apt to entertain a request to do business with the Navajo Tribe again?

Mr. HANSEN. With irrevocable LCs in place I would. Different credit policies, in other words.

Senator DECONCINI. You mean if the money was up front and you were sure of the transaction?

Mr. HANSEN. Yes, sir.

Senator DECONCINI. Was there ever any discussion as to the source of the funds to purchase these airplanes?

Mr. HANSEN. Yes; there were numerous discussions about this because the BIA had stopped money movement sometime in July 1987. There had been a lot of restrictions put on the Navajos after the Big Bo transaction. Some of these discussions centered around whose money was whose and did they know and could they identify money that was their own because they continuously alleged 100 million dollars' worth of income from the sale of assets off the reservation. They also continuously said they could not pay the bills or buy the airplanes or do whatever they were agreeing to do because of no access to liquid money. At one point I just asked them flat out. "If you have all this money why don't you just identify some of your own money and go put it in a bank?" I suggested a bank, the Founders Bank, and they went to it and put some money there and ultimately bought airplanes from it and I was doing this to clear the way to get out of the problem—for me getting out of the problem of the BIA—and let them deal with it themselves.

Senator DECONCINI. Did they say where the source of this money ultimately came from?

Mr. HANSEN. They just said it was theirs. The recollection I got from it was they weren't sure where it came from.

Senator DECONCINI. Was there any discussion that it might be Federal moneys?

Mr. HANSEN. I discussed that with them. I brought it up as to how are you going to identify which moneys are yours and which is Federal money and make sure you have some source for this money because you are already under investigation.

Senator DECONCINI. You gave them that advice?

Mr. HANSEN. I suggested it.

Senator DECONCINI. You discussed that.

Mr. HANSEN. Oh, yes; we discussed it at length numerous times.

Senator DECONCINI. Did they concur with that?

Mr. HANSEN. Yes; they liked it, put $5 million over there at Founders Bank for acquisition of airplanes.

Senator DECONCINI. I have no further questions.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

Just to clarify a couple of details in your testimony I would like for you to elaborate on them if you would. You offered two King Air 200's, 1985 model, to the tribe. Your asking price for the airplanes was $3.25 million, is that right?

Mr. HANSEN. That's approximate.

Senator MCCAIN. You later found out that these exact same aircraft were sold for $3.7 million to the tribe, in addition, there was other equipment for the aircraft that was supposed to be bought by the tribe which brought the price up to $4.7 million, is that accurate?

Mr. HANSEN. Those are the numbers that I have been told that the transfers totalled. I don't know what they actually got for it, I do know they got those original two airplanes, they did not get paint and interior for them, but they must have got something for the additional money.

Senator MCCAIN. But these aircraft were exactly the same as the ones you offered the tribe, as far as you know.

Mr. HANSEN. By serial number.

Senator MCCAIN. There was no difference in equipment on board?

Mr. HANSEN. No; they were the exact same airplanes.

Senator MCCAIN. But there was approximately a $500,000 difference in the purchase price, in addition to other equipment that was to be installed, is that your understanding?

Mr. HANSEN. That is what I understand.

Senator MCCAIN. At the 5-minute meeting that took place in your office, who spoke for the Navajos?

Mr. HANSEN. The initial offer was made by Piochie and I made my comments and accusations and was told by Reardon those were real strong accusations and Morgan took him outside my office for two or three minutes, they came back in and agreed.

Senator MCCAIN. Who stated that they agreed, do you remember?

Mr. HANSEN. I believe it was Reardon, who is one of their attorneys.

Senator MCCAIN. What do you mean by "Mr. Morgan took them outside the office"? He stood up and said, "let's go outside"?

Mr. HANSEN. I have an outside access door to my office. They went outside on the ramp, talked for two or three minutes, came back in agreed, and Reardon and I put a 1-page draft together and we signed it and they left.

Senator McCAIN. Could you as accurately as possible recount the part of your phone conversation with Mr. Morgan where he said to you that $45,000 will be given to some individual? The reason why I ask this is because there is a significant difference, as you well know, between being asked to lower the cost of a piece of equipment to be purchased by any individual organization, which is perfectly acceptable for people to try to receive the lowest price that they can for any piece of equipment for an organization they represent, and the identification of moneys to be diverted to an individual's pockets. Do you understand what I am saying here?

Mr. HANSEN. Yes, sir.

Senator McCAIN. So, would you recount, as specifically as you can, exactly what was said about the $45,000.

Mr. HANSEN. Yes; I will. About three or four minutes into the conversation about whether or not they would buy planes or whether if they did not buy them they would pay the expense money that we were owed, we came full circle that they probably would buy planes immediately—they had encountered some expenses on their side and they would expect me to cover those expenses and they amounted to $45,000 and they would identify who they were to send the money to.

Senator McCAIN. And what was your response?

Mr. HANSEN. My response was very neutral at the time. I did not say yes or no. I told him I had no $45,000 built into the sale to give anyone, that that money would have to be added to the prices already quoted for these aircraft or we would have to change airplanes whereby it can be imbedded into the price, that's one problem. Secondarily, they are under investigation so this is liable to be scrutinized and the person receiving the money has to be entitled to a commission out of the sale.

Senator McCAIN. What was the response to that?

Mr. HANSEN. That they would deal with those problems and let me know.

Senator McCAIN. Thank you.

Thank you, Mr. Chairman.

Senator DECONCINI. Any further questions?

Thank you, Mr. Hansen, very much for your testimony.

Our next witness will be Eugene (Pete) Twardowicz, Investigator with the Committee.

[Witness sworn.]

Senator DECONCINI. Thank you. Please be seated. Mr. Sollers will conduct the inquiry.

STATEMENT OF EUGENE (PETE) TWARDOWICZ, INVESTIGATOR, SPECIAL COMMITTEE ON INVESTIGATIONS

Mr. SOLLERS. Good morning, Mr. Twardowicz.

Mr. TWARDOWICZ. Good morning.

Mr. SOLLERS. Please state your full name for the record.

Mr. TWARDOWICZ. Full name is Eugene Peter Twardowicz.

Mr. **Sollers**. How are you employed, sir?

Mr. **Twardowicz**. I have my own financial and fraud investigative business operation out of Baltimore, MD.

Mr. **Sollers**. What is the name of that business?

Mr. **Twardowicz**. It is Twardowicz and Associates.

Mr. **Sollers**. Did you recently retire from Federal law enforcement?

Mr. **Twardowicz**. Yes; I did.

Mr. **Sollers**. How long have you been in law enforcement?

Mr. **Twardowicz**. I have been in law enforcement since 1961.

Mr. **Sollers**. In 1961 how, did you break in?

Mr. **Twardowicz**. In 1961 I became a special agent with the criminal investigation division of the Internal Revenue Service [IRS]. I stayed with the IRS until approximately 1978, when I resigned and accepted a position as in-house investigator of the U.S. Attorney's Office in Baltimore, it is the U.S. Attorney's Office for the District of Maryland.

Mr. **Sollers**. Mr. Twardowicz, you were in-house investigator for the U.S. Attorney's Office in Maryland for how many years?

Mr. **Twardowicz**. For approximately 9 years.

Mr. **Sollers**. Mr. Twardowicz, during those years at the U.S. Attorney's Office and also your years as an IRS special agent, did you put together a number of substantial fraud cases?

Mr. **Twardowicz**. I did.

Mr. **Sollers**. Among those cases, what cases did you put together, sir?

Mr. **Twardowicz**. Well, I didn't do them all by myself. I was the lead financial criminal investigator in the Dale Anderson—he was a Baltimore County executive and a predecessor in Baltimore County to Spiro Agnew—but I was the lead criminal investigator in the *Dale Anderson* case, the *Spiro Agnew* case and then *Governor Marvin Mandel* case.

Mr. **Sollers**. Spiro Agnew, of course, being the former Vice President of the United States.

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. Besides those cases, have you put together numerous fraud investigations and prepared for numerous trials in such matters?

Mr. **Twardowicz**. Yes; I have.

Mr. **Sollers**. Have you also been involved in other investigations in which the tracing of funds is important?

Mr. **Twardowicz**. Yes.

Mr. **Sollers**. What sort of investigations?

Mr. **Twardowicz**. When I was with the U.S. Attorney's Office in the early 1980s, I would say that for approximately 5 years we put our efforts into the drug trafficking narcotics problem and I was involved in many major narcotics trafficker investigations.

Mr. **Sollers**. I take it as part of those narcotics investigations that it is important to trace funds in preparing evidence for trial of those cases?

Mr. **Twardowicz**. That is what you basically do in a major narcotics investigation.

Mr. **Sollers**. If you had to give your specialty, Mr. Twardowicz, what would that be?

Mr. **Twardowicz**. Tracing of funds, the use of indirect accounting methods, those kind of accounting methods that earn net worth and expenditure computations, source and application of funds, bank deposits, methods, and pure expenditure methods used to trace funds that are expended by people in illegal operations.

Mr. **Sollers**. Mr. Twardowicz, over the last several months have you assisted the Special Committee on Investigations in looking into various matters concerning the Big Boquillas Ranch?

Mr. **Twardowicz**. I have.

Mr. **Sollers**. Mr. Twardowicz, who is Peter MacDonald?

Mr. **Twardowicz**. Peter MacDonald is the elected Chairman of the Navajo Nation.

Mr. **Sollers**. And, of course, we are talking about Peter MacDonald, Sr., is that true?

Mr. **Twardowicz**. Yes; we are.

Mr. **Sollers**. Is he, in fact, an elected public official?

Mr. **Twardowicz**. Yes; he is an elected public official.

Mr. **Sollers**. Does he represent the largest tribe in the Nation, and that would be the largest tribe in population?

Mr. **Twardowicz**. Yes; Navajos have over 200,000 people in their tribe.

Mr. **Sollers**. How about the size of the Navajo Reservation?

Mr. **Twardowicz**. The size of the reservation is enormous. It is almost the size of West Virginia.

Mr. **Sollers**. Does their annual budget include millions of dollars of Federal funds?

Mr. **Twardowicz**. Yes; it does.

Mr. **Sollers**. Mr. Twardowicz, is Mr. MacDonald currently held accountable under Federal laws against gratuities and conflicts of interest?

Mr. **Twardowicz**. No; he is not. There are no direct statutory prohibitions against gratuities and conflict of interest.

Mr. **Sollers**. But there are such laws with regard to Federal officials, is that true?

Mr. **Twardowicz**. That is correct also.

Mr. **Sollers**. And is the issue of Federal laws covering elected Tribal officials one issue that is being considered by this committee?

Mr. **Twardowicz**. Yes; it is.

Mr. **Sollers**. Why is that, sir?

Mr. **Twardowicz**. Because basically there are no laws that cover either Peter MacDonald or any of the tribal chairmen or the higher-ups in any of the tribes from taking gratuities or taking payments.

Mr. **Sollers**. Has this committee received widespread allegations concerning such gratuities and conflicts of interest?

Mr. **Twardowicz**. We have.

Mr. **Sollers**. Now, Mr. Twardowicz, as you have already testified, you have been involved in an investigation into the Big Boquillas Ranch, and is that also known as Big Bo?

Mr. **Twardowicz**. Yes; it is.

Mr. **Sollers**. What is Big Bo?

Mr. **Twardowicz**. Big Bo is a ranch that is located in the northern part of Arizona. It is right south of the Grand Canyon, it comprises about 729 acres of land, it stretches some 60 miles south in Arizona and out of the 729,000 acres of land there are some 491,000 acres that were for sale and the remainder of that land was state lease lands.

Mr. SOLLERS. I think you said 729,000—we are talking about 729,000, correct?

Mr. TWARDOWICZ. Excuse me, that is correct, 729,000 acres.

Mr. SOLLERS. Within that 729,000, 491,000 acres actually comprises the actual tract itself, is that true?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. But the overall tract appears somewhat in a checkerboard fashion?

Mr. TWARDOWICZ. That is also correct.

Mr. SOLLERS. The 491,000 is combined with various land that could be leased from the state, is that true?

Mr. TWARDOWICZ. Yes.

Mr. SOLLERS. But when we talk about Big Bo we are specifically talking about 491,000 acres, is that correct?

Mr. TWARDOWICZ. Yes; that was the amount of land that was for sale.

Mr. SOLLERS. Is that land adjacent to the Navajo Reservation?

Mr. TWARDOWICZ. No; it is not.

Mr. SOLLERS. Is it many miles away?

Mr. TWARDOWICZ. Well, I don't know exactly how many miles away, but it is a sizable distance away from the existing reservation.

Mr. SOLLERS. Is that tract of land, Big Bo, owned by a company Tenneco West for a number of years?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. Has it been for sale or was it for sale for a lengthy period of time?

Mr. TWARDOWICZ. That tract of land was for sale going back into the early 1970s and has remained for sale by Tenneco West ever since they ceased their cattle grazing operation.

Mr. SOLLERS. And, in fact, that tract was sold to the Navajo Tribe in July 1987, is that true?

Mr. TWARDOWICZ. It was.

Mr. SOLLERS. Now backing up to the 1980s, did Tenneco West receive a number of offers for the ranch?

Mr. TWARDOWICZ. Yes; Tenneco West had received offers from at least three other parties besides the parties at interest here.

Mr. SOLLERS. Did we interview—by we, I mean the Special Committee on Investigations—interview Melvin Jans, president of Tenneco West, concerning offers they had received for the ranch?

Mr. TWARDOWICZ. We did.

Mr. SOLLERS. What was their advertised price in the mid-1980s?

Mr. TWARDOWICZ. In the mid-1980s, I believe it was in September, Melvin Jans——

Mr. SOLLERS. September of what year, sir?

Mr. TWARDOWICZ. September 1983. Melvin Jans had advertised that 491 acres of land——

Mr. SOLLERS. That was 491,000, correct?

Mr. TWARDOWICZ. It was 491,000 acres of land for sale at $25 million dollars.

Mr. SOLLERS. Mr. Twardowicz, what was Mr. Jans willing to accept on the Big Bo tract?

Mr. TWARDOWICZ. Mr. Jans stated to us that he would have been happy to get $18 million for that piece of land.

Mr. SOLLERS. In fact, Mr. Twardowicz, did Melvin Jans and Tenneco West have a signed agreement with a purchaser in 1985 for $17.8 million?

Mr. TWARDOWICZ. Yes; he did.

Mr. SOLLERS. Who was that agreement with?

Mr. TWARDOWICZ. That was with Karl Solomons Investments out of Wichita, KS.

Mr. SOLLERS. When we interviewed Mr. Jans, did he say whether or not he was pleased with this deal in 1985?

Mr. TWARDOWICZ. Mr. Jans was very pleased with the deal but evidently Mr. Solomon wasn't pleased with the deal because Mr. Solomon backed out on the deal; he didn't want to pay that much money for it.

Mr. SOLLERS. They actually had a signed agreement, is that true?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. The deal was in escrow and Tenneco West would be bound had Karl Solomon decided to come up with that $17.8 million in 1985, is that correct?

Mr. TWARDOWICZ. Yes; they would have.

Mr. SOLLERS. Now we have placed up on the easel what appears to be a settlement agreement, a real estate deal, and is that a copy of the Karl Solomon deal?

[See pp. 325–327.]

Mr. TWARDOWICZ. That is a copy of it.

Mr. SOLLERS. The purchase price for the Big Boquillas Ranch in 1985 would have been what figure, sir?

Mr. TWARDOWICZ. It would have been $17,380,000.

Mr. SOLLERS. As you testified, Mr. Solomon pulled out of the deal, is that true?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. Were there a series of other escrow deals in the $20 million to $25 million range in the mid-1980s?

Mr. TWARDOWICZ. Yes; there was a deal in September 1986 with E.G.B. Investments, very similar escrow deal for $25 million; and in December 1986 there was an analogous deal with Topango Properties for $25 million.

Mr. SOLLERS. In each case did the buyers pull out of the deal?

Mr. TWARDOWICZ. They did.

Mr. SOLLERS. Now, Mr. Twardowicz, did the committee also interview an individual named Con Englehorn?

Mr. TWARDOWICZ. We did.

Mr. SOLLERS. Who is he, sir?

Mr. TWARDOWICZ. He is a real estate appraiser from Headquarters West in Phoenix, AZ. He had been involved with the property for over 20 years, knew the value of it and had appraised small portions of this property.

Mr. SOLLERS. What did Mr. Con Englehorn say with regard to the value of this 491,000 acres?

Mr. TWARDOWICZ. Mr. Englehorn said that the value could in no way exceed $25 million for that property.

Mr. SOLLERS. That is as of 1987, when it was sold to the Navajo Tribe?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. He placed a maximum package value on that ranch of what amount, sir?

Mr. TWARDOWICZ. $25 million.

Mr. SOLLERS. Now, Mr. Twardowicz, in addition to the problem with the laws covering gratuities, et cetera, did the committee also have concern with regard to Federal funds?

Mr. TWARDOWICZ. Yes; we did.

Mr. SOLLERS. Is that also one of the reasons the committee began its investigation into Big Bo?

Mr. TWARDOWICZ. Exactly.

Mr. SOLLERS. Was there a concern that potentially there was fraud at the top of the Navajo Nation?

Mr. TWARDOWICZ. We were very much concerned with that.

Mr. SOLLERS. Did the committee receive allegations that there was co-mingling of tribal and government funds?

Mr. TWARDOWICZ. Yes; we did. Numerous allegations.

Mr. SOLLERS. In addition, had the BIA looked at the deal?

Mr. TWARDOWICZ. Yes; the BIA had looked at the deal.

Mr. SOLLERS. Did the committee wish to see whether or not the BIA had performed its proper function in reviewing such a deal?

Mr. TWARDOWICZ. Yes; they did.

Mr. SOLLERS. Now, Mr. Twardowicz, when specifically did the Navajo Tribe purchase Big Bo?

Mr. TWARDOWICZ. The Navajo Tribe purchased Big Bo in early July 1987.

Mr. SOLLERS. How did that come about, sir?

Mr. TWARDOWICZ. It came about—the deal actually started in January 1987, when Mr. Bud Brown approached Melvin Jans and represented himself as a broker for an unnamed client.

Mr. SOLLERS. When we say the deal actually began, we mean formal negotiations, is that true?

Mr. TWARDOWICZ. Formal negotiations in order for Bud Brown to buy this property so that he would have it to re-sell to the Navajos.

Mr. SOLLERS. As already stated, we interviewed Melvin Jans, is that true?

Mr. TWARDOWICZ. Yes; we did.

Mr. SOLLERS. What did Mr. Jans say about these preliminary negotiations?

Mr. TWARDOWICZ. Well, Mr. Jans said that he was approached by Bud Brown who said he was a broker for an unnamed client, that happened in early January 1987.

Mr. SOLLERS. Who is Bud Brown?

Mr. TWARDOWICZ. Bud Brown is a real estate broker from Phoenix, AZ.

Mr. SOLLERS. Do you know whether or not he has a relationship with Peter MacDonald, chairman of the Navajo Tribe?

Mr. TWARDOWICZ. Yes; I do.

Mr. SOLLERS. What is that relationship, sir?

Mr. TWARDOWICZ. Bud Brown is a very good friend of Peter MacDonald, Sr., and he was a chief fund raiser when Peter MacDonald, Sr., was running for election as tribal chairman.

Mr. **Sollers**. Please continue with your testimony concerning Melvin Jans and his negotiations with Mr. Brown.

Mr. **Twardowicz**. On January 7, 1987 there was a meeting between Mr. Tom Tracy, Mr. Bud Brown, and Melvin Jans.

Mr. **Sollers**. Let me stop you one more time. Who is Tom Tracy?

Mr. **Twardowicz**. Tom Tracy is the owner of Tracy Oil and Gas Company. He also owns Reppel Steel, which will come up later in my testimony, and he also owns a company by the name of White Eagle Stucco.

Mr. **Sollers**. What is Mr. Tracy's relationship with Bud Brown, if any?

Mr. **Twardowicz**. There is a relationship as such, these two are connected—Mr. Bud Brown was supposed to be acting as the broker, but we will find out that they are partners in this deal.

Mr. **Sollers**. And were Bud Brown and Tom Tracy good friends at least at that time?

Mr. **Twardowicz**. Oh, yes, they were good friends.

Mr. **Sollers**. Now according to Jans of Tenneco West, how was this deal presented to him? In other words, what was the structure and what did Brown tell him about his specific role in the deal?

Mr. **Twardowicz**. Well, like I said before, all Brown told Jans was that he was the broker of the deal. Mr. Tracy was going to buy the 491,000 acres.

Mr. **Sollers**. Who was to be the actual purchasing entity?

Mr. **Twardowicz**. The actual purchasing entity was going to be Tracy Oil and Gas Company.

Mr. **Sollers**. Was it Tracy Oil and Gas' financial statement which was to be put up?

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. As far as Jans knew did Brown have any equity interest in this deal?

Mr. **Twardowicz**. Jans did not know that Brown had any equity interest.

Mr. **Sollers**. Did meetings then occur in rapid fashion?

Mr. **Twardowicz**. Yes, numerous meetings.

Mr. **Sollers**. And, in fact, did Tracy Oil and Gas enter into an escrow agreement with Tenneco West on the tract of land?

Mr. **Twardowicz**. Yes; they did.

Mr. **Sollers**. When did that occur, sir?

Mr. **Twardowicz**. I believe the exact date of that is February 14, 1987. At the time they entered into the agreement there was a $100,000 refundable deposit put up by Tracy Oil and Gas.

Mr. **Sollers**. Did that basically give Tracy Oil and Gas a period of time to look over the property and check title?

Mr. **Twardowicz**. Exactly.

Mr. **Sollers**. But Tenneco West was bound at that point, is that true?

Mr. **Twardowicz**. Absolutely, they were bound.

Mr. **Sollers**. What were the monetary terms of that escrow agreement?

Mr. **Twardowicz**. The monetary terms were that they were to recede the $100,000 dollar deposit and they were going to purchase the 491,000 acres for $25 million.

Mr. Sollers. Did they enter into escrow on February 16 or February 14, do you recall?

Mr. Twardowicz. It might have been February 16.

Mr. Sollers. Now what happened 4 days later, Mr. Twardowicz, on February 20, 1987?

Mr. Twardowicz. Well, 4 days later Tom Tracy wrote to the Navajo Nation and offered that same property that they were going to buy for $25 million, he offered in writing to the Navajo Nation that property for $33 million-plus.

Mr. Sollers. Did negotiations between Tracy and Brown then begin with the Navajo Nation to basically flip this property to them?

Mr. Twardowicz. Yes, it did.

Mr. Sollers. Was there a March 25, 1987, meeting?

Mr. Twardowicz. Yes; there was.

Mr. Sollers. What happened at that meeting, sir?

Mr. Twardowicz. At that meeting there was an extension granted to Tracy and Brown. Tracy and Brown were not ready to go to settlement at that time.

Mr. Sollers. Let me just back you up. With regard to the first escrow agreement between Tracy Oil and Gas and Tenneco West, they put $100,000 down—and by they, I'm talking about Tracy and Brown—for a period of time to look at the ranch, true?

Mr. Twardowicz. That is correct.

Mr. Sollers. When was that period of time up?

Mr. Twardowicz. That period of time was up on March 25, 1987.

Mr. Sollers. Okay. Now with regard to this March 25 meeting, did they negotiate a new extension?

Mr. Twardowicz. Yes; they did.

Mr. Sollers. That extension was to when?

Mr. Twardowicz. That extension was until July 9, 1987, and in order to get that extension they had to come up with another $250,000.

Mr. Sollers. At this point was the money non-refundable?

Mr. Twardowicz. At this point the money was non-refundable.

Mr. Sollers. So Tracy had some $350,000 down at this point and it became non-refundable, is that true?

Mr. Twardowicz. Correct.

Mr. Sollers. Now at some point did the price of the ranch to Tracy Oil and Gas from Tenneco West rise to $26.2 million from $25 million?

Mr. Twardowicz. Yes, it did.

Mr. Sollers. Just briefly why was that?

Mr. Twardowicz. The reason for that is because there were mineral rights involved in this 491,000 acres. In fact, the buying party was entitled to mineral rights and it rose because Tracy and Brown wanted to buy 50 percent of those mineral rights, so the price escalated from $25 million up to $26,250,000.

Mr. Sollers. That basically was for 50 percent of the mineral rights, is that true?

Mr. Twardowicz. That is correct.

Mr. Sollers. Meanwhile, Mr. Twardowicz, are negotiations going on with the tribe?

Mr. Twardowicz. Yes; they are.

Mr. SOLLERS. That is between whom?

Mr. TWARDOWICZ. Negotiations with the tribe are between Mr. Brown and Mr. Peter MacDonald.

Mr. SOLLERS. In fact, did the tribe decide to purchase the ranch?

Mr. TWARDOWICZ. Yes; the tribe did purchase the ranch.

Mr. SOLLERS. When did they decide to put down a down payment on the ranch?

Mr. TWARDOWICZ. The down payment was not put down until May 25, 1987, and the tribe put down a down payment of one-half of a million dollars.

Mr. SOLLERS. As you have testified, settlement was in July 1987, is that true?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. Did we determine—and by we, again, the special committee—that pressure had been brought to bear to do the deal within the Navajo Tribe?

Mr. TWARDOWICZ. Yes.

Mr. SOLLERS. Were various warnings against the deal ignored?

Mr. TWARDOWICZ. Yes; they were.

Mr. SOLLERS. What, if anything, did we learn about pressure being brought to bear on a Navajo appraiser?

Mr. TWARDOWICZ. Well, we learned that Edison Woods was the Navajo appraiser and after the Navajos had received Mr. Tom Tracy's written offer, Mr. Woods, on March 2 and 3, went out to walk the property, take a look at it, and at the time was of the opinion that the property had a value in a range between $50 and $63 an acre, which, if you multiplied that out, would be much less than $33 million-plus.

Mr. SOLLERS. That $33 million-plus was the price that the Navajo Tribe was agreeing to pay Tracy Oil and Gas, is that true?

Mr. TWARDOWICZ. Well, that is what it was offered for and that is what they ended up paying for it.

Senator MCCAIN. What did his evaluation come out to, roughly?

Mr. TWARDOWICZ. Senator, $50 to $63. If it was valued at $50 an acre, it would have come out to about $24 million and if it was valued at $63, it would have come out to something like $31 million.

Senator MCCAIN. Thank you.

Mr. TWARDOWICZ. But the offer was on the table to buy it for $33.4 million and they needed an appraisal that equalled or exceeded $33.4 million.

Senator MCCAIN. Thank you.

Mr. SOLLERS. Thank you, Senator.

That appraisal that we have been discussing is an appraisal by Edison Woods, Navajo appraiser, is that true?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. Did we learn that Mr. Woods subsequently received some pressure to up his appraisal?

Mr. TWARDOWICZ. He did.

Mr. SOLLERS. How did we learn that, sir?

Mr. TWARDOWICZ. Well, we learned it through Mr. Robert Pencall.

Mr. SOLLERS. Who is Mr. Pencall?

Mr. TWARDOWICZ. Mr. Pencall is with the BIA.

Mr. SOLLERS. Do we in fact have a signed statement from Mr. Pencall?

Mr. TWARDOWICZ. Yes; we do.

Mr. SOLLERS. If you could just summarize that statement, Mr. Twardowicz, a copy of which is up on the easel.

[See p. 328.]

Mr. TWARDOWICZ. Well, I think the last sentence pretty much says it, the last sentence of the first paragraph, that he had come in with the lower figure and Ninabah Cahn had instructed him to increase the figure.

Mr. SOLLERS. Who is Ninabah Cahn?

Mr. TWARDOWICZ. Ninabah Cahn was the director of the land administration office for the Navajo Nation.

Mr. SOLLERS. Just so it is clear, this is a statement by BIA appraiser Pencall relating a conversation he had had with Edison Woods, Navajo appraiser, is that true?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. In the statement Mr. Pencall says that in the conversation he had with Woods, Woods related that he had received pressure to inflate his appraisal.

Mr. TWARDOWICZ. Yes.

Mr. SOLLERS. That had come from Ms. Cahn, correct?

Mr. TWARDOWICZ. It did.

Mr. SOLLERS. Of the Navajo tribal government, is that also true?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. What did the BIA decide to do shortly before the transaction was to go down?

Mr. TWARDOWICZ. Well, approximately about the same time, on July 2, 1987, Mr. Wilson Barber and a Mr. Floyd Espinosa of the BIA wrote to Mr. Peter MacDonald and were very much concerned about this transaction. They cited a series of things and advising Mr. MacDonald that the fair market value of this property was only $25 million, what he proposed to pay for it—or the Navajos were paying for it—$33.4 million was not a fair price. They also advised Mr. MacDonald that Mr. Brown is a party to this transaction and that Mr. Brown is a good personal friend of Peter MacDonald. They also advised that there was no way Tracy Oil and Gas could have consummated that deal if, in fact, the Navajos were not buying it on the back end. Which meant that if the Navajos had been patient, they could have backed out of that deal and secured that property directly from Tenneco for $25 million.

[See p. 329.]

Mr. SOLLERS. Or, in fact, $26.2 million with 50 percent of mineral rights.

Mr. TWARDOWICZ. Exactly.

Mr. SOLLERS. Was another fact also cited, that fact being that Tenneco West had had this property advertised for sale for a lengthy period of time, specifically in the Wall Street Journal?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. That it had been well known in the real estate community in Phoenix and elsewhere that this Big Boquillas Ranch was for sale for $25 million, is that true?

Mr. TWARDOWICZ. That is also correct.

Mr. **Sollers.** Did the Navajo attorney general, himself, also advise at least a delay in the purchase to review these various allegations and problems?

Mr. **Twardowicz.** Yes; I think that Mr. Upshaw suggested that they take 2 weeks to look at this deal and delay this deal for a period of something like 2 weeks or 15 days.

Mr. **Sollers.** That was pursuant to an internal memorandum? [See pp. 330-333.]

Mr. **Twardowicz.** Exactly.

Mr. **Sollers.** In fact, was settlement sped up?

Mr. **Twardowicz.** Well, settlement actually occurred on July 6, 1987, and it did not go to record until the following day.

Mr. **Sollers.** Mr. Twardowicz, how was the deal structured? How was the sale actually structured?

Mr. **Twardowicz.** Well, basically, the sale was structured such that Tracy and Brown, who were parties to the sale, purchased the property from Tenneco for $26,250,000. They sold that same property within a very short period of time to the Navajos for $33,417,386.

Mr. **Sollers.** We have a chart up on the easel and it shows a figure by the word subtotal, and is that actually the profit which was made by Tracy Oil and Gas on the flip of the property?

Mr. **Twardowicz.** Well, it was not actually made by Tracy Oil and Gas because Tracy Oil and Gas did not have 100 percent of this deal. Bud Brown had the majority of this deal.

Mr. **Sollers.** But on its surface, did the deal appear as Tracy Oil and Gas making $7 million-plus on the flip of the property?

Mr. **Twardowicz.** Yes; on the papers. That is what the papers reflected.

Mr. **Sollers.** Also was Mr. Bud Brown to receive a commission?

Mr. **Twardowicz.** Yes; he was.

Mr. **Sollers.** Of how much?

Mr. **Twardowicz.** Of $750,000. This was the commission that was to be paid by Tenneco.

Mr. **Sollers.** So that would diminish Tenneco's take on the sale, is that true?

Mr. **Twardowicz.** That is correct.

Mr. **Sollers.** Did that $750,000 diminish the amount of money earned by Tracy Oil and Gas, at least on the papers?

Mr. **Twardowicz.** No; it did not.

Mr. **Sollers.** Pretty good profit, right, Mr. Twardowicz?

Mr. **Twardowicz.** It is almost an $8 million profit.

Mr. **Sollers.** Particularly when appraisals were that the land was worth no more than $25 million or so, is that true?

Mr. **Twardowicz.** That is correct.

Mr. **Sollers.** Who put up the money for this deal?

Mr. **Twardowicz.** Tracy Oil and Gas actually put up the money until the flip occurred. They were the ones that actually put up the $350,000 payment.

Mr. **Sollers.** So it was Tracy Oil and Gas that was on the hook if anything went wrong, is that true?

Mr. **Twardowicz.** That is right.

Mr. **Sollers.** In reality, Mr. Twardowicz, what was the interest of Bud Brown, the close friend of Peter MacDonald, in this transaction, besides his $750,000 commission?

Mr. TWARDOWICZ. Well, actually, Bud Brown started off owning two-thirds of this deal. Tracy Oil and Gas—being Tom Tracy—had one third of it.

Mr. SOLLERS. Mr. Twardowicz, we have a copy of a typewritten agreement placed on the easel which I will ask the Chairman to admit.

[See p. 338.]

Senator DECONCINI. The exhibits here will be admitted in the record, including the other ones to come.

[Materials to be supplied appear in appendix.]

Mr. SOLLERS. Thank you, Mr. Chairman.

I will ask you if this is the original agreement between Mr. Bud Brown and Mr. Tom Tracy as to how they were going to split the profits on the flip of the ranch?

Mr. TWARDOWICZ. It is.

Mr. SOLLERS. In this agreement Mr. Brown was to receive how much of the profits?

Mr. TWARDOWICZ. Mr. Brown was to receive two-thirds of the profits and Mr. Tracy was to receive one-third.

Mr. SOLLERS. This is dated when, sir?

Mr. TWARDOWICZ. That is dated February 20, 1987.

Mr. SOLLERS. By the way, Mr. Twardowicz, on what day did Mr. Tracy formally offer the ranch to the Navajo Tribe?

Mr. TWARDOWICZ. That is the same day that this agreement was dated.

Mr. SOLLERS. Did Mr. Brown and Mr. Tracy have a bit of a disagreement at the last moment which caused a slight alteration in their profit split?

Mr. TWARDOWICZ. Yes; they did.

Mr. SOLLERS. That occurred when, sir, do you recall?

Mr. TWARDOWICZ. That occurred very late in the game and, in fact, I believe it occurred when settlement occurred.

Mr. SOLLERS. Or right around settlement?

Mr. TWARDOWICZ. Right in that area.

Mr. SOLLERS. Did a new agreement come to pass which altered somewhat the profit split but still kept the profits very much in favor of Mr. Brown?

[See p. 339.]

Mr. TWARDOWICZ. That is right.

Mr. SOLLERS. This agreement is dated when, sir?

Mr. TWARDOWICZ. That agreement is dated July 8, 1987, and it reads for itself, it is signed by Tom Tracy and Byron T. "Bud" Brown, and as you can see, the split now is 59 percent for Brown and 41 percent for Tracy. Actually, Tracy gained 7 percent.

Mr. SOLLERS. In addition to the 59 percent Mr. Brown was also to get $750,000, is that true?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. How then pursuant to this agreement were the profits split on the Big Boquillas Ranch?

Mr. TWARDOWICZ. Roughly, Bud Brown received close to $5 million out of the deal and Tom Tracy received close to $3 million. The exact figures are on the board.

Mr. SOLLERS. If you could just run down the figures, sir. Mr. Brown's 59 percent is equal to what?

Mr. **Twardowicz**. Mr. Brown's 59 percent is $4,228,757.74 plus the commission of $750,000 that he received from Tenneco, which netted him a profit of $4,978,757.74. Mr. Tracy received 41 percent of the deal and that computed out to $2,938,628.26.

Mr. **Sollers**. That is a pretty good profit for Mr Tracy, is that true?

Mr. **Twardowicz**. That is a very healthy profit.

Mr. **Sollers**. But he was the one with the financial risk, is that also true?

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. Mr. Brown made approximately $5 million on this deal, is that true?

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. Mr. Twardowicz, what did Mr. Brown bring to this transaction?

Mr. **Twardowicz**. Well, I think Mr. Brown brought the most essential element and that was Mr. Peter MacDonald.

Mr. **Sollers**. Is that something that the Committee then ventured to look into?

Mr. **Twardowicz**. We certainly did.

Mr. **Sollers**. Specifically, the relationship between Bud Brown and Peter MacDonald.

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. Mr. Twardowicz, did the U.S. Senate issue numerous subpoenas to parties to the transaction, including Bud Brown, Tom Tracy, and their companies?

Mr. **Twardowicz**. Yes.

Mr. **Sollers**. Did the committee obtain thousands of pages of documents which it has reviewed?

Mr. **Twardowicz**. We did.

Mr. **Sollers**. Has the committee also deposed or interviewed the principal parties?

Mr. **Twardowicz**. Yes; we have.

Mr. **Sollers**. Mr. Twardowicz, what did the Committee learn with regard to a trip in November 1986, which included Mr. MacDonald, his wife, his daughter, and Bud Brown?

Mr. **Twardowicz**. We learned that Bud Brown paid for a trip to Hawaii for Mr. and Mrs. MacDonald and his daughter, Hope. When I say he paid for the trip, he paid for the flight back and forth to Hawaii, paid the hotel bills and paid to take Mr. Peter MacDonald, Sr., golfing.

Mr. **Sollers**. I believe we put up three documents or the blowups of three documents that relate to this trip, is that true?

Mr. **Twardowicz**. Yes.

Mr. **Sollers**. Does that include a United Air Lines ticket for Hope MacDonald?

[See p. 340.]

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. Approximately $1,000.

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. A check from Mr. Brown for Aloha Air Lines ticket books?

[See p. 341.]

Mr. **Twardowicz**. That is correct. The top exhibit, check number 162 relates to the bottom airline tickets.

Mr. **Sollers**. That is a couple of books of airline tickets for the MacDonalds and the Browns?

[See p. 340.]

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. Now are these just examples of the various receipts and records that we obtained concerning the Hawaii trip in November 1986?

Mr. **Twardowicz**. Yes; it is.

Mr. **Sollers**. This is shortly after Mr. MacDonald has been elected as chairman of the Navajo Tribe, is that true?

Mr. **Twardowicz**. It is a matter of days.

Mr. **Sollers**. Did we determine that approximately $5,[illegible]00 was spent by Mr. Bud Brown on expenses for the MacDonalds during this trip?

Mr. **Twardowicz**. Yes; we did.

Mr. **Sollers**. By the way, Mr. MacDonald was officially inaugurated when, sir?

Mr. **Twardowicz**. The date of that——

Mr. **Sollers**. How does January 13, 1987 hit you?

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. OK. Now did the committee have reason to believe, Mr. Twardowicz, that the scheme to purchase the Boquillas ranch was at least in existence at the time of the Hawaii trip?

Mr. **Twardowicz**. Yes; we did.

Mr. **Sollers**. Among the subpoenas, did we issue one to Reppel Steel?

Mr. **Twardowicz**. Yes; we did.

Mr. **Sollers**. What is Reppel Steel, sir?

Mr. **Twardowicz**. Reppel Steel is a company that is owned by Tom Tracy.

Mr. **Sollers**. Did the committee find any documents of interest with regard to the response to the subpoena to Reppel Steel?

Mr. **Twardowicz**. Yes.

Mr. **Sollers**. What, if anything, did we find, sir?

Mr. **Twardowicz**. The first document that we found was the wiring of $25,000 by Reppel Steel into the United Bank of New Mexico to pay down a loan of Peter MacDonald, Sr.

Mr. **Sollers**. What was the date of this wire transfer, Mr. Twardowicz?

Mr. **Twardowicz**. The date of the wire transfer was on, I believe, February 14, 1987.

Mr. **Sollers**. February 14 or 24?

Mr. **Twardowicz**. I take that back. February 24, 1987.

Mr. **Sollers**. How did that coincide with negotiations on the Big Boquillas Ranch?

Mr. **Twardowicz**. Well, at the time the negotiations were going on, it was four days after the official formal offer was made by Mr. Tracy to the Navajos.

Mr. **Sollers**. We placed on the easel what appears to be a copy of a wire transfer. Is that the transfer you were referring to?

[See p. 342.]

Mr. **Twardowicz**. That is the transfer.

Mr. **Sollers**. The amount is what, sir?

Mr. **Twardowicz**. The amount is $25,000 being wired from the Valley National Bank of Arizona out of the account of Reppel Steel into United New Mexico Bank. And that was credited to Peter MacDonald.

Mr. **Sollers**. Reppel Steel, again, was the company of Tom Tracy, principal in this transaction, is that true?

Mr. **Twardowicz**. Yes; it was.

Mr. **Sollers**. The specific instructions on this wire transfer were what?

Mr. **Twardowicz**. Specific instructions as it states there, Bud Brown for credit to Peter MacDonald.

Mr. **Sollers**. And it stated "Attention: Lonnie Hamilton", is that correct?

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. Who is Lonnie Hamilton?

Mr. **Twardowicz**. Lonnie Hamilton is a vice president at the United New Mexico Bank.

Mr. **Sollers**. Did the committee interview Mr. Hamilton?

Mr. **Twardowicz**. We did.

Mr. **Sollers**. What, if anything, did he say concerning this wire transfer?

Mr. **Twardowicz**. Mr. Hamilton explained the whole wire transfer to us. He basically told us that in early 1986 Mr. Peter MacDonald, Sr., originated a $70,000 loan with the United New Mexico Bank. Originally this loan was to be a 120-day loan and was to be paid sometime during the summer of 1986. At the time, Peter MacDonald did not have the money to pay this loan as it was intended and he came up and reduced the loan down at that time by $10,000—meaning he still owed the bank $60,000.

Mr. **Sollers**. Was Mr. MacDonald receiving pressure from Mr. Hamilton to pay off his loan?

Mr. **Twardowicz**. Yes; they actually extended the loan until December 1986 to pay off the $60,000 and Mr. Hamilton was hounding Mr. MacDonald to pay this loan off or at least to substantially pay it down.

Mr. **Sollers**. Now what involvement did Mr. Bud Brown have in arranging the pay down of the loan?

Mr. **Twardowicz**. Well, Mr. Bud Brown basically talked to Mr. Hamilton, told Mr. Hamilton that $25,000 would be coming to the Bank shortly to pay this loan down. Mr. Brown told Mr. Hamilton that he had owed this money to Mr. MacDonald.

Mr. **Sollers**. Did Mr. Brown actually fly into Gallup, New Mexico to meet with Mr. Hamilton concerning the pay down of Peter MacDonald's loan?

Mr. **Twardowicz**. Yes; he did.

Mr. **Sollers**. Did Mr. Brown at that time actually set up this wire transfer which was to benefit Peter MacDonald, Sr.?

Mr. **Twardowicz**. Yes; I think it is fair to say that Mr. Brown orchestrated this entire transfer.

Mr. **Sollers**. Mr. Twardowicz, did the committee also uncover some information concerning the lease of a BMW?

Mr. **Twardowicz**. Yes; we did.

Mr. **Sollers**. How did that come about, sir?

Mr. TWARDOWICZ. That came about through the subpoena of records. In January, I believe it is January 17, 1987, we discovered, that Mr. Brown had leased a BMW for Mr. Peter MacDonald.

Mr. SOLLERS. What kind of BMW are we talking about?

Mr. TWARDOWICZ. It was a new 1986 BMW, I think they call it 735i.

Mr. SOLLERS. That is a sedan, is it not?

Mr. TWARDOWICZ. Yes; it is.

Mr. SOLLERS. It is a very expensive car, is it not?

Mr. TWARDOWICZ. Yes; it is.

Mr. SOLLERS. Was the manager of the BMW dealership interviewed?

Mr. TWARDOWICZ. Yes; he was.

Mr. SOLLERS. What, if anything, did the manager of the BMW dealership say concerning the delivery of this BMW and who arranged for its delivery?

Mr. TWARDOWICZ. The manager of the BMW dealership, and it is actually Camelback where the BMW was leased from, basically said that Bud Brown was the one that made the arrangements for the lease, instructed him to have a salesman drive this car up to Flagstaff and deliver it personally to Peter MacDonald, Sr., and he, Bud Brown, would fly the salesman back down.

Mr. SOLLERS. Did this in fact occur?

Mr. TWARDOWICZ. That did occur.

Mr. SOLLERS. Did the committee determine who paid for the down payment on the lease?

Mr. TWARDOWICZ. Yes; we did.

Mr. SOLLERS. Who was that, sir?

Mr. TWARDOWICZ. That was Bud Brown.

Mr. SOLLERS. Approximately how much money did Bud Brown pay for the lease of this BMW 735i?

Mr. TWARDOWICZ. Well, the initial down payment was $2,657. Then the lease called for an $813 monthly payment and Mr. Brown made these payments.

Mr. SOLLERS. Did we determine that Mr. Brown made at least two monthly lease payments after he made the down payment on the BMW?

Mr. TWARDOWICZ. Yes; we did.

Mr. SOLLERS. Now we have placed up on the easel various documents relating to the BMW lease, is that correct?

[See pp. 344–346.]

Mr. TWARDOWICZ. We have.

Mr. SOLLERS. At the top of the uppermost document it states whose name, sir?

Mr. TWARDOWICZ. At the top it states the name of Peter MacDonald. The date of it is January 21, 1987.

Mr. SOLLERS. There are various signatures on the documents, is that true?

Mr. TWARDOWICZ. Yes; it is.

Mr. SOLLERS. Who do those signatures appear to be?

Mr. TWARDOWICZ. Signature on the top document appears to be that of Peter MacDonald, Sr.

Mr. SOLLERS. Is a credit reference given on one of the documents?

Mr. TWARDOWICZ. Yes; it is.

Mr. **Sollers**. Who is the credit reference for this BMW lease?

Mr. **Twardowicz**. Byron T. "Bud" Brown.

Mr. **Sollers**. Among the documents also is the actual term for the lease which include the down payment and the monthly lease payment, is that true?

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. Now, Mr. Twardowicz, among the many documents from Bud Brown, did we receive a promissory note?

Mr. **Twardowicz**. We did.

Mr. **Sollers**. That promissory note which we placed on the easel, does that appear to be a copy of the promissory note received in response to subpoena to Byron T. "Bud" Brown?

[See p. 347.]

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. Who is that promissory note purportedly between?

Mr. **Twardowicz**. The promissory note is between Peter MacDonald, Jr., the son of Peter MacDonald, Sr., as to borrower, and Byron T. Brown as the note holder.

Mr. **Sollers**. The amount is what, sir?

Mr. **Twardowicz**. The amount is $25,000.

Mr. **Sollers**. It is Peter MacDonald, Jr., is that correct?

Mr. **Twardowicz**. That is correct.

Mr. **Sollers**. He is the son of Peter MacDonald, Sr., is that also true?

Mr. **Twardowicz**. That is also true.

Mr. **Sollers**. Is that Rocky MacDonald?

Mr. **Twardowicz**. Yes; it is.

Mr. **Sollers**. This is what kind of note?

Mr. **Twardowicz**. It is a demand promissory note for $25,000, payable on demand at 10 percent interest.

Mr. **Sollers**. Did the committee proceed to investigate this note?

Mr. **Twardowicz**. Yes; we did.

Mr. **Sollers**. Will another witness speak to the validity of this note?

Mr. **Twardowicz**. Yes; another witness will.

Mr. **Sollers**. Along with the note, Mr. Twardowicz, did the Committee also obtain a copy of a consulting agreement.

[See pp. 348, 349.]

Mr. **Twardowicz**. Yes; we did.

Mr. **Sollers**. What does this agreement purport to be?

Mr. **Twardowicz**. This agreement was a consulting agreement between ROMAC Enterprises and Bud Brown Enterprises.

Mr. **Sollers**. What is ROMAC Enterprises?

Mr. **Twardowicz**. ROMAC Enterprises, as you see on the document, is a company that Peter MacDonald, Jr., again the son, is the president of. Byron T. Brown is the president of Bud Brown Enterprises.

Mr. **Sollers**. When was this consulting agreement to be in force, sir?

Mr. **Twardowicz**. It was to be in force throughout the year 1988, from January 1, 1988 until the end of the year.

Mr. **Sollers**. What were the services to be provided pursuant to this consulting agreement?

Mr. TWARDOWICZ. The services were kind of unique as it states in the consulting agreement.

Mr. SOLLERS. What actually were the services to be performed? Were they legal services?

Mr. TWARDOWICZ. They were legal support services, as stated therein.

Mr. SOLLERS. Now, Mr. Twardowicz, you have seen, I am sure, consulting agreements in your experience as an investigator, is that true?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. Is this an unusual consulting agreement?

Mr. TWARDOWICZ. It was kind of like a red flag when I saw it. It was very unusual.

Mr. SOLLERS. Why was it like a red flag? Mr. Twardowicz. Well, it goes on for almost 1½ pages and it basically says nothing except that the services to be supplied are very unique.

Mr. SOLLERS. Very what, sir?

Mr. TWARDOWICZ. Very unique.

Mr. SOLLERS. Now did the Committee also proceed to investigate this agreement as well?

Mr. TWARDOWICZ. Yes; we did.

Mr. SOLLERS. Will another witness speak to the validity or veracity of this agreement?

Mr. TWARDOWICZ. He will.

Mr. SOLLERS. Finally, Mr. Twardowicz, did we receive some notes from Wayne James?

Mr. TWARDOWICZ. Yes; we did.

Mr. SOLLERS. He is an employee of Mr. Tom Tracy?

Mr. TWARDOWICZ. That is correct. Tracy Oil and Gas.

Mr. SOLLERS. Before we go to Mr. James' notes, with regard to the consulting agreement, was there an actual amount that Mr. Peter MacDonald, Jr., was to be paid on a monthly basis for these unique services?

Mr. TWARDOWICZ. Yes; Peter MacDonald, Jr., was to get $5,500 per month, according to this consulting agreement.

Mr. SOLLERS. The length of this agreement was what, sir?

Mr. TWARDOWICZ. Throughout the year 1988, 12 months, a total of $66,000.

Mr. SOLLERS. Now I think we can get to Mr. James' notes. Did we also receive in response to subpoena a number of notes from Wayne James, employee of Tracy Oil and Gas?

Mr. TWARDOWICZ. Yes; we did.

Mr. SOLLERS. Did those notes include Mr. James' notations as to Big Bo expenses?

Mr. TWARDOWICZ. They did.

Mr. SOLLERS. One version of these notes is dated and appears as May 26, 1987, is that true?

[See p. 350.]

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. And that, of course, is well before the transaction is consummated, is that also true?

Mr. TWARDOWICZ. That is also correct.

Mr. SOLLERS. And up in the right hand corner—first of all, there is a list of many expenses, is that correct?

Mr. TWARDOWICZ. Correct.

Mr. SOLLERS. On the other page they relate to Bud, it says, and FK and KTT, is that right?

[See p. 351.]

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. There are various other notations. Up in the right hand corner is there a column that has PM on it?

Mr. TWARDOWICZ. Yes.

Mr. SOLLERS. Underneath PM are there four numbers, at least as of May 26, 1987?

Mr. TWARDOWICZ. Yes; there is.

Mr. SOLLERS. What are those numbers, sir?

Mr. TWARDOWICZ. The first one is $4,000; the next one is $900; the following one is $900; and the one after that is $25,000.

Mr. SOLLERS. The committee has conducted interviews to determine what these figures mean, have they not?

Mr. TWARDOWICZ. Yes; what they relate to.

Mr. SOLLERS. With regard to those figures that are under PM, at least as of May 26, 1987, what is your understanding as to what those figures meant?

Mr. TWARDOWICZ. They relate to the monies that Tracy Oil and Gas had to pay out to Peter MacDonald or for the benefit of Peter MacDonald in this Big Bo transaction.

Mr. SOLLERS. That is as of only May 26, 1987, is that true?

Mr. TWARDOWICZ. That is correct.

Mr. SOLLERS. The $25,000 is what, sir?

Mr. TWARDOWICZ. $25,000 is obviously the note.

Mr. SOLLERS. How about as to the $900?

Mr. TWARDOWICZ. The two $900 payments are the payments that were made for the lease of the BMW.

Mr. SOLLERS. Does the $4,000 figure include the down payment on the BMW lease and other expenses?

Mr. TWARDOWICZ. Yes.

Mr. SOLLERS. Mr. chairman, that concludes my questions of Mr. Twardowicz.

Thank you very much Mr. Twardowicz.

Senator DECONCINI. Mr. Twardowicz, just for the record, will you explain to me the difference now with the Big Boquillas Ranch. There are 729,000 acres in the entire ranch?

Mr. TWARDOWICZ. That is correct.

Senator DECONCINI. How much of that is deeded acreage?

Mr. TWARDOWICZ. The deeded portion in that is 491,000 acres.

Senator DECONCINI. So the balance is leased from Federal, State, or somebody?

Mr. TWARDOWICZ. That is correct, Senator.

Mr. TWARDOWICZ. In the value of the property, is it based on the 729,000 or the 491,000?

Mr. TWARDOWICZ. No; it is based on the 491,000.

Senator DECONCINI. So the value of the leases are not included because they are annual leases or short term leases.

Mr. TWARDOWICZ. Exactly.

Senator DECONCINI. They do have some value, do they not?

Mr. TWARDOWICZ. Sure.

Senator DeConcini. Is this a working ranch with cattle on it and what have you?

Mr. Twardowicz. My understanding is that small portions of this land, very small portions, are actually cattle grazing country. The bulk of the property is not.

Senator DeConcini. Do you know in the course of your investigation, if a contract had been entered into to sell the ranch for $17.5 million once before and there seemed to be interest at Tenneco to sell it for under $20 million, why did Tracy and Brown come in and make an offer of $26 million? Do you have any idea?

Mr. Twardowicz. Well, the only reason I can see why they would do that, Senator, is one, there was no way that they could have actually bought this property based on Tracy Oil and Gas financial statements. They had to know that they could flip it—and when I say flip it, I mean resell it for a much higher amount, which they did.

Senator DeConcini. So it did not make any difference to them, I guess.

Mr. Twardowicz. Exactly. It didn't make any difference.

Senator DeConcini. Whether or not they paid $18, $19, or $20 or $26, they were going to sell it for a profit to the Navajo Nation and that was behind the whole deal.

Mr. Twardowicz. That is exactly it. I know if I were in their shoes, I would not try and negotiate with Tenneco and try and get it for $22 million.

Senator DeConcini. When you knew you had a deal.

Mr. Twardowicz. When I knew I had close to an $8 million profit built in there.

Senator DeConcini. Now, when did the transaction close, the date, between Tenneco and Tracy?

Mr. Twardowicz. Between Tenneco and Tracy it is my understanding it closed—and that is a little bit fuzzy—it closed on July 6, I believe.

Senator DeConcini. In 1987?

Mr. Twardowicz. In 1987.

Senator DeConcini. When did the transaction close between Tracy and the Navajo Nation?

Mr. Twardowicz. That is where I am not entirely sure, Senator. I know there is an agreement that was signed on July the 2nd. I do not know exactly when it actually closed, whether it was a few minutes after they actually bought it or whether it was a period of a day. I can tell you when they recorded it.

Senator DeConcini. When did they record the transfer?

Mr. Twardowicz. They recorded it on July 7, and that was a matter of minutes apart.

Senator DeConcini. The close of the sale to the Navajo Nation came sometime after the close of the sale to Tracy, which occurred on July 6 and sometime before July 8?

Mr. Twardowicz. That is correct.

Senator DeConcini. So within a period of 1 or 2 days at most?

Mr. Twardowicz. Exactly.

Senator DeConcini. The $750,000 commission, just so I understand it, that Mr. Brown received from the seller was included in his 59 percent.

Mr. TWARDOWICZ. No; that was in addition to it.

Senator DECONCINI. That was in addition to the 59, 41 split?

Mr. TWARDOWICZ. That is correct. That was just Bud Brown's money that he made on the side.

Senator DECONCINI. I see.

Thank you, Mr. Twardowicz, for your testimony.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Twardowicz.

To recap your testimony in either a few minutes or 2 days time there was one transaction made between one party and another, and another transaction made, which entailed a profit of approximately $8 million, is that an accurate statement?

Mr. TWARDOWICZ. That is correct, Senator.

Senator MCCAIN. I may ask you a question or two that is not in your area of expertise, but I think these issues have to be brought out at some point. Is it your understanding that the BIA, particularly if Federal moneys are involved, should have some involvement in the approval or disapproval of such a transaction?

Mr. TWARDOWICZ. Well, it is not in my area of expertise, but I would certainly think so. If the Federal Government is supplying monies and those moneys are used in such a reckless manner to put an $8 million profit in someone's hands on a flip of a piece of land like this.

Senator MCCAIN. In fact, we have a memorandum from one BIA official that voices serious reservations about this deal.

Mr. TWARDOWICZ. We absolutely do.

Senator MCCAIN. To your knowledge were the reservations voiced by the BIA addressed by the tribe?

Mr. TWARDOWICZ. They were not addressed at all to my knowledge.

Senator MCCAIN. Even though the BIA expressed serious reservations about this issue, there was no follow-up on the part of the BIA in any way to your knowledge?

Mr. TWARDOWICZ. I don't know of any follow-up that occurred by the Navajos. I know the BIA warned them of the transaction and told them that it was an unfair transaction and that you should not do this.

Senator MCCAIN. In your opinion, and mine by the way, if Federal moneys are involved in a transaction, the BIA must be intimately involved.

Mr. TWARDOWICZ. I would think so.

Senator MCCAIN. So in your opinion—if this is, indeed, a fraudulent transaction—some culpability must lay with the BIA for not overseeing what happens to taxpayers dollars?

Mr. TWARDOWICZ. Well, I would think so if they had the power to stop something like this. I think you first have to give them the power to stop this deal from going down and if they had the power to stop it and they did not stop it from occurring, then, yes, I think they would be very culpable.

Senator MCCAIN. And even if they didn't have the authority—which, by the way, I believe they did have the authority and I think other witnesses will provide us with that information—but even if they believed that they did not have the authority according to the memorandum that was sent by Mr. Espinosa, they at least had an obligation to speak out or to more seriously address this issue other than this one memorandum if those reservations raised in Mr. Espinosa's memorandum were not addressed by the tribe.

Mr. TWARDOWICZ. I would think that would be fair to say, Senator.

Senator MCCAIN. Did you discuss, in the course of your investigation, the BIA's role as they observed, or were involved in, this transaction?

Mr. TWARDOWICZ. No; we really did not touch on that.

Senator MCCAIN. I think that one of the jobs of this Committee and this investigation is to find out what the BIA knew, when they knew it, exactly what they did and what they should have done, in what appears to this member and I believe to you, a clearly questionable, if not fraudulent transaction. Would you agree with that?

Mr. TWARDOWICZ. Yes; I would agree with that. And Senator, let me say maybe other committee members looked into the aspect of the BIA, but I did not myself.

Senator MCCAIN. I see. Other members of the investigating team of the committee looked into the aspect of the BIA.

Mr. TWARDOWICZ. Yes.

Senator MCCAIN. In the course of your investigation did you look at the role, if any, played by the Navajo attorney general's office?

Mr. TWARDOWICZ. We did not look at the role played by the Navajo attorney general's office, although I do know that a Mr. Upshaw had a memorandum relating to this deal and actually suggested to Peter MacDonald that the actual purchase of this land be delayed for a period of time so that the Navajos could take a second look. Now, I did not go beyond that.

Senator MCCAIN. Has that memorandum been made a part of the record?

Mr. TWARDOWICZ. I do not know.

Senator MCCAIN. Mr. Chairman, I would request that the memorandum from the Navajo attorney general to the tribal chairman that was just referred to in testimony be made part of the record.

Senator DECONCINI. Do you have that?

Mr. TWARDOWICZ. I do not have it here with me, Senator.

Senator DECONCINI. Do we have it?

Mr. TWARDOWICZ. Yes.

Senator DECONCINI. Without objection it will appear in the record.

[Information to be supplied appears in appendix.]

Senator MCCAIN. Now, is it your view of any tribal structure, any governmental structure, that it is the task of the attorney general to enforce laws and investigate violations of those laws.

Mr. TWARDOWICZ. Yes.

Senator MCCAIN. From what you have determined in the course of this investigation, did the Navajo attorney general pursue this issue with zeal?

Mr. TWARDOWICZ. Senator, I really do not know what, if anything, the Navajo attorney general might have done after this deal came out in public, or even prior to that, that was not my job assisting the committee in this investigation.

Senator McCain. Well, I would also suggest that one of the jobs of this committee is to find out exactly what happened in that phase of this transaction as well.

Is it your information that land values, particularly in rural Arizona, specifically ranch values, have declined over a period of time from the late 1970s and into the 1980s?

Mr. Twardowicz. I have learned that through my exposure to this investigation. Unlike many pieces of land throughout the country, especially in populated areas that escalate and appreciate in value, it is my understanding that these land values have decreased in value substantially.

Senator McCain. Let me just review for a minute, if I could. The ranch was bought from Tenneco ostensibly by Tracy Oil and Gas. In reality, it was bought by Tracy Oil and Gas and Mr. Brown, who had either a 66-percent share of the expenses and profits or a 59-percent share of the expenses and profits, depending upon which agreement you view?

Mr. Twardowicz. That is correct.

Senator McCain. And this first purchase was made for $26.2 million?

Mr. Twardowicz. That is correct.

Senator McCain. How much money was actually given to Tenneco by Tracy Oil and Gas and/or Mr. Brown in the course of this transaction?

Mr. Twardowicz. Are you talking about prior to settlement, Senator?

Senator McCain. Prior, during, and after.

Mr. Twardowicz. Well, basically, what Tracy Oil and Gas came up with was $350,000 as a deposit and then when they went to settlement the amount that was paid at settlement, I believe, I don't have the exact figures before me, but it was something like another $4 million. But at the same time that they paid Tenneco $4 million, they were getting like $8 million from the Navajos as their payment, because those parties took back notes on this.

Senator McCain. So the out of pocket expense for the entire transaction—and, of course, they were reimbursed for that, too—but the out of pocket expense was about $350,000 on a $26 million and subsequently, $33 million deal?

Mr. Twardowicz. Yes; and keep in mind that they were out of pocket $350,000 up until May 25 when they received one-half of a million dollars from the Navajos. So at that time they are $150,000 ahead.

Senator McCain. You say that they were almost immediately given moneys from the Navajo Tribe as a result of the transaction, in sum of about $8 million?

Mr. Twardowicz. Well, that is at settlement.

Senator McCain. At settlement they were given $8 million up front. How was the remaining $25 million handled?

Mr. Twardowicz. The remaining approximately $24 or $25 million that still had to be paid and there was a take back note over a 4-year period charging the Navajos 10 percent interest on this money. On the other end of the deal, Bud Brown and Tracy Oil owed Tenneco something like $22 million and Tenneco was only charging them 9 percent. So they actually picked up a percent interest that they were making money on. That doesn't sound like it is a lot, but when you are talking about a percent interest on $22 to $25 million, you are talking some serious dollars.

Senator McCain. For the record how many years have you been involved in the investigation of fraud and corruption?

Mr. Twardowicz. I have been involved for 27 years, Senator.

Senator McCain. For 27 years. Roughly, how much of that time were you involved with fraudulent land transactions? Has that been the subject of many of your prior investigations?

Mr. Twardowicz. I can't really say fraudulent land flips, as such. I would say in the past 4 years, I have been very much involved with fraudulent land flips insofar as my activity of investigations into defunct savings and loans. I would say that probably the first 23 years it was tracing cash, political corruption investigation, pay-offs, that kind of stuff. But I do not remember right off the top of my head anything of this nature.

Senator McCain. Would you feel qualified, in light of your previous experiences and investigations, to judge a transaction such as this?

Mr. Twardowicz. Yes; I would believe so.

Senator McCain. Would you describe in a sentence or two, or however long it takes, the way you feel about this particular investigation and your conclusions from the investigations.

Mr. Twardowicz. My conclusion is this was a major fraud on the Navajo people.

Senator McCain. Thank you very much, Mr. Chairman.

Senator DeConcini. Mr. Twardowicz, in the trade of real estate transactions, you refer to this as a flip. Is that similar to what was often referred to as a double escrow?

Mr. Twardowicz. Yes, Senator.

Senator DeConcini. Which means that the purchaser of the property has resold it prior to or very near the time he is to close the original sale, is that correct?

Mr. Twardowicz. That is correct.

Senator DeConcini. Now, in normal real estate transactions such contracts and double escrows, there is nothing illegal with that, is that right?

Mr. Twardowicz. Absolutely not.

Senator DeConcini. And what, in your opinion, distinguishes this transaction from what you would call a double escrow or a flip in the normal course of commercial real estate sales?

Mr. Twardowicz. Well, I think the thing that distinguishes this from a normal flipped type transaction, and it is all subjective, number one is the enormous amount of profit of $8 million. But that in itself is not the only element. The thing that leads me to believe that the Navajo people have been defrauded on this was the fact that the person that was selling the property could not have closed that transaction whatsoever, and the Navajos knew this, or, at least Peter MacDonald knew this. All he had to do was listen to Mr. Upshaw, be patient with this transaction, and they could have bought it directly from Tenneco for $25 million.

Senator DeConcini. So your point is that the second purchaser here, the Navajo Nation, knew that they could have bought it as the first purchaser bought it, without going through the double escrow.

Mr. TWARDOWICZ. That is correct.

Senator DECONCINI. So in essence the Navajo people paid $8 million more than they had to, assuming they wanted the property in the first place.

Mr. TWARDOWICZ. That is correct. Now, to distinguish that, Senator, from another deal, if Tenneco had sold it to Bud Brown and Bud Brown had three other buyers out there for that property that were offering $33.4 million or any place close, then I would not think anything bad about that deal.

Senator DECONCINI. Do you know if Tenneco was aware of the second escrow, the sale to the Navajos?

Mr. TWARDOWICZ. Melvin Jans said originally that he was not aware of it. He became aware of it, I think, in late March or early April when Bud Brown and Tracy went to him and said that instead of having this double escrow why don't we just form a joint venture between Tenneco and us and sell it to the Indians. When he learned the amount of money that the Indians were paying for this property, his comment was "that's a hell of a lot of profit."

Senator DECONCINI. Mr. Twardowicz, just a small question in relation to dollars. After that explanation on the BMW, under that contract, I didn't see that, was there a right to purchase the automobile or do you know?

Mr. TWARDOWICZ. I looked for that, Senator, and I did not see that and I also looked at that contract and generally on those lease arrangements they will have a limitation as to the number of miles that you drive these cars. You just can't go in and lease a BMW for $800 a month and drive it 5,000 miles a month. Commonsense will say that that would be a bad deal.

Senator DECONCINI. What is the value of that automobile, do you have any idea?

Mr. TWARDOWICZ. I do not know that, Senator. That could easily be obtained. It is a new 1986 black sedan and I think it is a model 735i.

Senator DECONCINI. Thank you, Mr. Twardowicz. Now, going back to this double escrow, just so that I understand this, the arrangements between Tenneco and Tracy was a down payment with a note for $22 million at 9 percent over 4 years, is that right?

Mr. TWARDOWICZ. That is correct.

Senator DECONCINI. Then Tracy and Brown sold it to the Navajos under double escrow for a down payment of roughly $8 million, a $25 million note, 4 years at 10 percent.

Mr. TWARDOWICZ. That is correct.

Senator DECONCINI. And that is the way it happened. Now do you know from Tenneco or your investigation, was Tracy Oil and Gas Company an adequate purchaser? Did they feel secure with the mortgage on the land for $22 million, or do you know?

Mr. TWARDOWICZ. If I understand your question—are you saying did Tenneco feel secure with Tracy?

Senator DECONCINI. Yes; with the first sale?

Mr. TWARDOWICZ. I do not know that.

Senator DECONCINI. Okay. Thank you, Mr. Twardowicz. I have no further questions.

Mr. Sollers.

Mr. SOLLERS. No, Mr. Chairman, thank you.

Senator DECONCINI. Thank you Mr. Twardowicz, for your testimony this morning.

The committee will stand in recess till 2 p.m. this afternoon when we will hear from Mr. Peter MacDonald, Jr.

[Whereupon, at 11:59 a.m., the special committee was adjourned, to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION—2:03 P.M.

Senator DECONCINI. The Special Committee on Investigations will come to order.

Our next witness will be Peter MacDonald, Jr. Mr. MacDonald, would you please raise your right hand?

[Witness sworn.]

Senator DECONCINI. Mr. Ballen will proceed with the questioning.

STATEMENT OF PETER MacDONALD, JR., ATTORNEY, PHOENIX, AZ, ACCOMPANIED BY MICHAEL KIMERER, ESQ.

Mr. BALLEN. Mr. MacDonald, could you please state your full name for the record?

Mr. MACDONALD. Peter MacDonald, Jr.

Mr. BALLEN. Do you have a nickname?

Mr. MACDONALD. Yes.

Mr. BALLEN. What is it, sir?

Mr. MACDONALD. Rocky.

Mr. BALLEN. Mr. MacDonald, what is your relationship to Bud Brown?

Mr. MACDONALD. I respectfully exercise my right, under the Fifth Amendment, not to answer that question.

Mr. BALLEN. Mr. Chairman, the witness has refused to answer a question. I request that the Chairman of the committee communicate our immunity order to Mr. MacDonald.

Senator DECONCINI. Mr. MacDonald, I am hereby communicating to you an order issued by the U.S. District Court for the District of Columbia.

The order provides, in substance, that you may not refuse to provide evidence to the special committee on the basis of your privilege against self-incrimination. It provides that evidence obtained from you under the order may not be used against you in any criminal proceedings.

A copy of the order is at the witness table, and without objection, will be placed in the record at this time. And your counsel, I presume, will acknowledge having received that.

Pursuant to the order, I direct you to answer the questions put to you, Mr. MacDonald.

The immunity procedure is completed.

Senator DECONCINI. Would you identify yourself for the record?

[Immunity order appears in appendix. See p. 352.]

Mr. KIMERER. I am Michael Kimerer, counsel to Peter MacDonald, Jr.

Senator DECONCINI. Thank you, Mr. Kimerer.

Mr. Ballen.

Mr. **Ballen**. Thank you very much, Mr. Chairman.

Mr. MacDonald, your father is Peter MacDonald, Sr.?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. He is the elected chairman of the Navajo Nation Tribal Government?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. Sir, who is Bud Brown?

Mr. **MacDonald**. Mr. Brown is a longtime friend of my father, the Chairman, and of myself.

Mr. **Ballen**. How long have you known Mr. Brown?

Mr. **MacDonald**. I've known Mr. Brown several years.

Mr. **Ballen**. Would you and your father see him on social occasions at various points in time?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. Would you describe him as a close friend of your father's?

Mr. **MacDonald**. Yes; I would.

Mr. **Ballen**. Mr. MacDonald, did there come a time that your father told you that he had received from Bud Brown a $25,000 wire transfer payment?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. Do you recall when he told you that?

Mr. **MacDonald**. Approximately the summer of 1987.

Mr. **Ballen**. Sir, what did your father tell you about his receiving the $25,000?

Mr. **MacDonald**. He told me that he received a $25,000 wire transfer from Mr. Bud Brown—actually from Mr. Tom Tracy, at the request of Mr. Bud Brown. It was wired from a bank in Phoenix to a bank in Gallup, New Mexico.

Mr. **Ballen**. Who is Tom Tracy?

Mr. **MacDonald**. Tom Tracy, I believe, owned Reppel Steel, which was a company in Phoenix, and also Tracy Oil and Gas.

Mr. **Ballen**. And what did your father tell you about the role of Mr. Tracy and this wire transfer?

Mr. **MacDonald**. He had told me that it was Mr. Tracy that had placed the wire from his bank to--Mr. Tracy's bank to the bank in Gallup, New Mexico.

Mr. **Ballen**. And what did your father tell you Bud Brown's role was in the wire transfer?

Mr. **MacDonald**. He had asked Mr. Brown that since the—he had told me that he had asked Mr. Brown to help him out because of a note that he had at United New Mexico Bank. I believe that's the bank, I subsequently found out. The note had become due and needed to be paid down on. And he asked Mr. Brown if he could help him.

Mr. **Ballen**. Sir, I direct your attention to the exhibit that's mounted there, which is a wire transfer document. Have you ever seen that before?

Mr. **MacDonald**. No; I have not.

[Wire transfer document appears in appendix.]

Mr. **Ballen**. Did your father tell you why he had received the $25,000?

I believe you just answered that, because of the note that he had. I'm sorry.

Mr. MacDonald. Yes.

Mr. Ballen. Did your father also relate to you that during the same period of time that he had received the wire transfer from Bud Brown and Tom Tracy, that he had also received a BMW automobile from Bud Brown?

Mr. MacDonald. Yes.

Mr. Ballen. What did your father tell you about that?

Mr. MacDonald. He informed me that—it was either January or February—he had received a BMW from Mr. Brown and Mr. Tracy.

Mr. Ballen. And did he tell you anything in reference to the downpayment and the lease payments on that BMW?

Mr. MacDonald. Yes.

He told me that Mr. Tracy and another fellow named Wayne James, together with Mr. Brown, had made arrangements to arrange to get this BMW for him.

Mr. Ballen. Do you know who Mr. James was?

Mr. MacDonald. I believe he was an accountant for Mr. Tom Tracy. I couldn't say for sure.

Mr. Ballen. Did your father tell you why Mr. Brown and Mr. Tracy had made arrangements for the BMW to be delivered to him?

Mr. MacDonald. No; he did not.

Mr. Ballen. Did your father tell you whether or not he had made any lease payments on the BMW?

Mr. MacDonald. Yes.

Mr. Ballen. What did he tell you?

Mr. MacDonald. He told me that he had not made any payments whatsoever.

Mr. Ballen. Sir, did your father tell you where the car came from, and to whom it was delivered?

Mr. MacDonald. Yes; he did.

Mr. Ballen. What did he say?

Mr. MacDonald. He told me that the car had been delivered to the Flagstaff home, his Flagstaff home, and he had taken delivery of it.

Mr. Ballen. Did he tell you whether or not he had signed for the car?

Mr. MacDonald. Yes; he did.

Mr. Ballen. Did he also tell you that Brown had made payments on the car?

Mr. MacDonald. Yes.

Mr. Ballen. Sir, what kind of a car was it?

Mr. MacDonald. It was a BMW L7 is the title of it. It's a Seven Series BMW. I think it's a 735, or something to that effect.

Mr. Ballen. Sir, I'd like to direct your attention to the Camelback Lease that is on the exhibit board. Do you recognize your father's signature on that document?

Mr. MacDonald. Yes; I do.

[Camelback Lease appears in appendix.]

Mr. Ballen. Is that the lease for the BMW?

Mr. MacDonald. I believe it is, yes.

Mr. BALLEN. Mr. MacDonald, directing your attention to early 1988, did your father call for a meeting between himself, you and Bud Brown?

Mr. MACDONALD. Yes.

Mr. BALLEN. Why did your father call for the meeting?

Mr. MACDONALD. He explained to me that the $25,000 wire transfer and the BMW needed some explanation, because there was an investigation going on regarding, I believe it was Mr. Tom Tracy. And that, at that time, the sale of the Big Boquillas Ranch had come about.

Mr. BALLEN. In other words, the payment of the wire transfer and the BMW lease was from two principals who were involved in the Big Boquillas sale?

Mr. MACDONALD. Yes.

He felt that it looked bad, and that something needed to be figured out about these two items.

Mr. BALLEN. This was occasioned by an investigation that had commenced against Mr. Tracy relative to the sale?

Mr. MACDONALD. I believe that's correct, yes.

Mr. BALLEN. Now, Mr. MacDonald, did this meeting take place?

Mr. MACDONALD. Yes, it did.

Mr. BALLEN. And where did the meeting take place, to the best of your recollection?

Mr. MACDONALD. In Phoenix, AZ.

Mr. BALLEN. During that meeting, did you, your father, and Brown plan a false story to explain that $25,000 from Brown to your father?

Mr. MACDONALD. Yes.

Mr. BALLEN. What did your father say?

Mr. MACDONALD. My father had told me that the $60,000 note that was at United New Mexico Bank, which had become due——

Mr. BALLEN. He had a note himself of $60,000 at the United New Mexico Bank?

Mr. MACDONALD. Correct.

Mr. BALLEN. Okay.

Proceed, please.

Mr. MACDONALD. That back in February or January 1985 he had loaned me approximately $30,000 for my own personal use. And since half of that $60,000 note that he had at United New Mexico Bank was technically my debt, that it could be said that instead of him asking for the money to pay down on the note through Mr. Brown, it would have been myself that had asked for it.

Mr. BALLEN. Now, Mr. MacDonald, the $60,000 note did, in fact, exist at the United New Mexico Bank?

Mr. MACDONALD. Yes.

Mr. BALLEN. That was true?

Mr. MACDONALD. Yes.

Mr. BALLEN. Your father had asked Brown to pay down on that note $25,000, and that was true?

Mr. MACDONALD. Yes.

Mr. BALLEN. And you did owe some money—you did incur a debt to your father?

Mr. MACDONALD. Yes; I did.

Mr. Ballen. What was the false nature of the story that your father wanted you to say?

Mr. MacDonald. The false nature was that it would have been myself that had asked Mr. Brown to help pay down on that note, and I would have been responsible for the $25,000, myself.

Mr. Ballen. Who was it that was to be said, under this false story, that went to Bud Brown to ask for the money?

Mr. MacDonald. It would have been myself that had gone to Bud Brown under the false story, and not my father.

Mr. Ballen. The idea being that you would have asked the money to be wire transferred to your father's account because you and your father had a previous debt?

Mr. MacDonald. Yes.

Mr. Ballen. That would have been the explanation as to why that money went to your father's account rather than your account?

Mr. MacDonald. Yes.

Mr. Ballen. That was not true?

Mr. MacDonald. That was not true.

Mr. Ballen. Why did your father say to you that he wanted you, in effect, to take the fall for this transaction?

Mr. MacDonald. Since I had owed the money, it was an easier explanation to come up with. I was the only other person that it would have—that it could have been for.

Mr. Ballen. Your father did not want it to appear that it was who had, in fact, asked Brown for the money?

Mr. MacDonald. Yes.

Mr. Ballen. Why was that?

Mr. MacDonald. Well, as I stated earlier, it looked bad. And since Mr. Brown was a principal in the sale of the Big Boquillas, it was felt that these two items might appear as some sort of gift or favor in order to encourage the sale of the Big Boquillas Ranch.

Mr. Ballen. Sir, during this meeting between yourself, Brown, and your father, when this cover-up plan was devised, was it decided to create false documents to substantiate it?

Mr. MacDonald. Yes.

Mr. Ballen. Whose idea was that?

Mr. MacDonald. I would basically say it was mine.

Mr. Ballen. All right.

And what were those documents that were decided upon?

Mr. MacDonald. Well, obviously if I was going to borrow the money, there needed to be a promissory note from myself to Mr. Brown, and in order to figure out a way in which to pay down that note, a consulting agreement was drafted, as well.

Mr. Ballen. What was the purpose of the promissory note, to simply provide a cover for the $25,000?

Mr. MacDonald. Yes.

Mr. Ballen. The consulting agreement was to provide a plausible explanation as to why Brown was even loaning you this money to begin with?

Mr. MacDonald. Yes.

Mr. Ballen. Now, you testified to the existence of the BMW that Brown made downpayments on, and lease payments. Did you, Peter MacDonald, Sr., your father, and Bud Brown also devise a false story to explain the fact that Brown and Tracy had made a downpayment and lease payments on a BMW automobile for your father?

Mr. MacDonald. Yes.

Mr. Ballen. What was that story, sir?

Mr. MacDonald. That story was that I had informed my father that I was coming out to take the bar examination out in Arizona in the summer of 1987, and that I would need transportation. My father then supposedly would have asked Mr. Brown, together with my father's credit, to help him get a car for me, and that Dad had accepted delivery of it, and held it in abeyance or storage until I came out in the summer of 1987. And that was to explain the BMW.

Mr. Ballen. So, in other words, the BMW was to be for you rather than your father?

Mr. MacDonald. Yes.

Mr. Ballen. Would the downpayment and the lease payment made by Brown be considered part of the $25,000 note, or added to it under this scenario?

Mr. MacDonald. No.

Mr. Ballen. Was that discussed?

Mr. MacDonald. No.

Mr. Ballen. The story basically was that the car was for you and had nothing to do with your father?

Mr. MacDonald. That's correct.

Mr. Ballen. That the downpayment had nothing to do with your father?

Mr. MacDonald. Correct.

Mr. Ballen. That was not true, was it?

Mr. MacDonald. No.

Mr. Ballen. Sir, as a result of this meeting among the three of you, did you create the false documents?

Mr. MacDonald. Yes.

Mr. Ballen. Let me direct your attention to the two documents that are mounted here, and ask you if you can identify them, starting with the consulting agreement?

[Promissory note and the consulting agreement appear in the appendix:]

Mr. MacDonald. Well, the consulting agreement, the one on the left, I drafted, and the one on the right is the promissory note that I drafted, as well.

Mr. Ballen. Is that your signature on it, sir?

Mr. MacDonald. Yes; it is.

Mr. Ballen. Did you sign that false note?

Mr. MacDonald. Yes; I did.

Mr. Ballen. Did you deliver both these documents to Bud Brown?

Mr. MacDonald. Yes; I did.

Mr. Ballen. Do you recall where that was?

Mr. MacDonald. In Phoenix, AZ.

Mr. Ballen. Do you recall when?

Mr. MacDonald. The early part of 1988.

Mr. Ballen. Mr. MacDonald, the promissory note is dated January 14, 1987, is that correct?

Mr. **MacDonald.** Yes.

Mr. **Ballen.** Is that when it was signed by you?

Mr. **MacDonald.** No; it was not.

Mr. **Ballen.** Why was it dated January 14, 1987?

Mr. **MacDonald.** I had been told that arrangements were made sometime in January or February 1987 for the wire transfer. I basically just pulled a date out of the hat to explain the time at which interest would run on the note.

Mr. **Ballen.** Mr. MacDonald, how many times over the course of 1988 and 1989 did you, your father, and Bud Brown meet to discuss this cover-up that you have just described?

Mr. **MacDonald.** Approximately five times.

Mr. **Ballen.** And what generally, sir, occurred during those meetings?

Mr. **MacDonald.** We went over the scenario, or the false story, to get it clear in everybody's mind exactly how the pieces of the puzzle were put together.

Mr. **Ballen.** You went over the scenario as you just described it, basically, would that be correct?

Mr. **MacDonald.** Yes.

Mr. **Ballen.** Did there come a time in these discussions that Mr. Brown told you and your father that he had to testify under oath?

Mr. **MacDonald.** Yes.

Mr. **Ballen.** Do you recall when that was?

Mr. **MacDonald.** It was early December.

Mr. **Ballen.** Did you meet?

Mr. **MacDonald.** Yes; we did.

Mr. **Ballen.** The three of you?

Mr. **MacDonald.** Yes.

Mr. **Ballen.** Brown, yourself, and your father?

Mr. **MacDonald.** Yes.

Mr. **Ballen.** What did the three of you discuss at that meeting?

Mr. **MacDonald.** We had discussed again, Mr. Brown had stated that he was going to testify and wanted to know if we were all in agreement as to what the story was before he went in to testify.

Mr. **Ballen.** Were you all in agreement on the false story that Brown should testify to?

Mr. **MacDonald.** At that time, yes.

Mr. **Ballen.** Did both you and your father tell Brown to go ahead with that story?

Mr. **MacDonald.** Yes.

Mr. **Ballen.** So you knew, and your father knew that Bud Brown would be committing perjury if he went ahead with this false scenario?

Mr. **MacDonald.** Yes.

Mr. **Ballen.** That was the plan among the three of you?

Mr. **MacDonald.** Yes; it was.

Mr. **Ballen.** Was there any discussion specifically among the three of you, you, your father, and Brown, that going forward with this story—by the way, this was to be testimony before this committee, is that correct?

Mr. **MacDonald.** Yes.

Mr. **Ballen.** That going forward with this story might occasion perjury charges, was there any discussion about that?

Mr. MacDonald. Yes; there was.

Mr. Ballen. What was the discussion, sir?

Mr. MacDonald. The discussion came about from Mr. Brown, who showed a letter to us—from his attorney to him—that expressed a concern about this story and about the fact that Mr. Brown, if he went forward with this story, would be up for perjury charges.

Mr. Ballen. How did you and your father, and Brown respond to that?

Mr. MacDonald. We stated that we were all still in agreement with the story——

Mr. Ballen. Despite—excuse me, sir?

Mr. MacDonald [continuing]. And should continue to go forward with it.

Mr. Ballen. Despite that risk?

Mr. MacDonald. Yes.

Mr. Ballen. Did you, your father and Brown ever discuss what Tom Tracy and Wayne James, the accountant, might testify to on the $25,000 and the BMW?

Mr. MacDonald. It was speculated among the three of us that perhaps Mr. Tracy and Mr. James would basically spill their guts as to the wire transfer and the occasion of arranging for the BMW.

Mr. Ballen. What would they say if they spilled their guts?

Mr. MacDonald. Well, that they had arranged the wire transfer, and that they had arranged the financing, or the automobile purchase.

Mr. Ballen. If they had talked to that effect, sir, is that what occasioned the rise to this cover-up story?

Mr. MacDonald. Yes.

Mr. Ballen. How so?

Mr. MacDonald. They would have been the people that would have told that the wire transfer had come from themselves, and the BMW had been arranged for my father and that the wire transfer had been for my father.

Mr. Ballen. Therefore, in this particular plan that you had, if they gave that testimony, it would not be inconsistent with your testimony because Brown and you, and your father would testify as to the circumstances giving rise to this transfer, and they could only testify as to the transfer?

Mr. MacDonald. That's correct.

Mr. Ballen. So that's why it seemed like a good story to the three of you, because they could not poke holes in it?

Mr. MacDonald. That's correct. Only the three of us would have intimate knowledge as to what the arrangements for the occasion of the wire transfer or the BMW would have been.

Mr. Ballen. Was there ever any discussion among you, your father, and Brown about another false story that you could give to cover up the $25,000?

Mr. MacDonald. Yes.

Mr. Ballen. What was that, sir?

Mr. MacDonald. It was another scenario whereby I had discussed with Mr. Brown, he'd informed me that Mr. Tracy had issued a 1099 form to him on the sale of—Mr. Brown had helped Mr. Tracy's sale of his business called Reppel Steel, and issued a

1099, which included the $25,000 which was wired from Mr. Tracy to the bank in New Mexico. I——

Mr. **Ballen**. I'm sorry.

The 1099 being a tax form?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. I'm sorry. Go ahead.

Mr. **MacDonald**. And I told Mr. Brown that to trace the money, it would then be traced back to the sale of Reppel Steel. Mr. Brown and the Chairman, I have been told, had a relationship in 1985 where they were doing some business together with some other folks in Phoenix to sell Reppel Steel and bring it up to, I believe, Gallup, New Mexico. And then to take that piece of property where Reppel Steel was in Phoenix, and to develop it.

And I said, since you have an ongoing relationship at that time, it's previous to the time that he was elected to office, and the money was traced to that sale, that it seemed better that—that would be a better story than the one that we had discussed earlier.

Mr. **Ballen**. In what perspective—from your perspective—would it be a better story?

Mr. **MacDonald**. Well, my perspective, I would not have been in the middle of it.

Mr. **Ballen**. Sir, how did Brown react to that story?

Mr. **MacDonald**. Well, I took it that it fell on deaf ears, and it was never discussed or brought up again.

Mr. **Ballen**. Did he give you any reasons, or did you discuss any reasons why that story didn't go forward?

Mr. **MacDonald**. Well, he expressed concern to me that his commission off the sale of Reppel Steel would not have been enough to cover the $25,000 wire transfer.

Mr. **Ballen**. Wasn't there another problem with the story, to the effect that it would have still had Brown paying your father, and they needed you to be involved?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. When you went to Mr. Brown on that story, was the first cover-up story, this one here, already in place?

Mr. **MacDonald**. Yes; it was.

Mr. **Ballen**. This new story, as you testify, would have gotten you out of it?

Mr. **MacDonald**. Yes; it would have.

Mr. **Ballen**. You wouldn't have to take the fall?

Mr. **MacDonald**. Correct.

Mr. **Ballen**. You wouldn't be here today?

Mr. **MacDonald**. Exactly.

Mr. **Ballen**. Mr. MacDonald, was it your father that asked you to go ahead with this cover-up story?

Mr. **MacDonald**. Yes; it was.

Mr. **Ballen**. Let me turn to another topic Mr. MacDonald.

Do you have consulting agreements with Thriftway and High Tech Consulting?

Mr. **MacDonald**. Yes; I do.

Mr. **Ballen**. Sir, what are the terms of those agreements?

Mr. **MacDonald**. With High Tech Recycling, Inc. I was retained to help them get a ground lease with the tribe to put in a waste disposal unit on the reservation at a small community called

Dilkon, AZ. Those are still in negotiation. And the terms of the contract was to run for a year, at which I was paid $6,000 a month.

Mr. BALLEN. How about with Thriftway?

Mr. MACDONALD. Thriftway, I'm to help them secure ground leases to monitor some of their activities on the reservation, and keep them informed as to new business site lease procedures or new changes in tribal law that might affect their business on the reservation. And those terms are, I have a year contract that runs at $5,000 a month.

Mr. BALLEN. Sir, who owns High Tech Recycling?

Mr. MACDONALD. Mr. William Aubrey.

Mr. BALLEN. Is he a principal in Blaze Construction?

Mr. MACDONALD. Yes; he is.

Mr. BALLEN. Does Blaze Construction do business on the reservation?

Mr. MACDONALD. Yes; it does.

Mr. BALLEN. Who introduced you to both Thriftway and High Tech Recycling, in order to enter into these consulting agreements?

Mr. MACDONALD. I had gained an entree through my father.

Mr. BALLEN. Sir, did there ever come a point in time that you asked Mr. Aubrey for a loan?

Mr. MACDONALD. Yes.

Mr. BALLEN. What were the circumstances behind that?

Mr. MACDONALD. I had gotten a call from my father late in March 1988, and he said he needed to raise some money and asked me if I could help him out. And I said, fine. I took it upon myself to call another principal at Blaze Construction, Mr. Paul Wood, and ask him if I could borrow money. He then ran it by Mr. Bill Aubrey, who okayed the loan, and I had the funds sent to me.

Mr. BALLEN. How much was the money, sir?

Mr. MACDONALD. $36,000.

Mr. BALLEN. This was to pay for the tuition for Peter MacDonald, Sr.'s daughters at the Cushing Academy in Massachusetts?

Mr. MACDONALD. Yes; it was.

Mr. BALLEN. What is the Cushing Academy?

Mr. MACDONALD. I believe it's a private preparatory school in Massachusetts.

Mr. BALLEN. At the high school level?

Mr. MACDONALD. Yes.

Mr. BALLEN. What were the terms of this loan with Mr. Aubrey?

Mr. MACDONALD. It was—I think it was a 90-day or a 60-day note that had been rolled over a couple of times.

Mr. BALLEN. All right.

Have you paid this loan at this point in time?

Mr. MACDONALD. No; I have not.

Mr. BALLEN. Mr. MacDonald, let me turn to another topic.

Have you ever received, personally, any payments from Bud Brown?

Mr. MACDONALD. Yes.

Mr. BALLEN. When did you receive them?

Mr. MACDONALD. From the summer of 1987 through, toward the end of the year of 1987.

Mr. BALLEN. How much did you receive from Bud Brown?

Mr. MACDONALD. I'd say approximately $5,000 to $7,000.

Mr. **Ballen**. Did you request this money from Mr. Brown?

Mr. **MacDonald**. Yes; I did.

Mr. **Ballen**. How did you request it?

Mr. **MacDonald**. I would call him up on the phone and ask to meet with him, and then at that point in time when we met, ask him if he could help me out.

Mr. **Ballen**. How did he respond?

Mr. **MacDonald**. He said he'd see what he could do.

Mr. **Ballen**. Was this request from you a request for a loan, or was it a request for money, or a gift, how did you phrase it?

Mr. **MacDonald**. I basically phrased it in terms of a loan.

Mr. **Ballen**. Did you view it as a loan?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. That you intended to pay it back or not pay it back?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. Have you paid it back?

Mr. **MacDonald**. Not at this time.

Mr. **Ballen**. Sir, are you aware of other payments besides this $25,000 we've been discussing, made by Bud Brown to your father?

Mr. **MacDonald**. I am not aware of any actual payments that were made, other than the $25,000.

Mr. **Ballen**. Were you aware of any requests made by your father?

Mr. **MacDonald**. Yes; I am.

Mr. **Ballen**. What were the nature of these requests?

Mr. **MacDonald**. My father would give me a telephone call, we'd discuss some general business and at some point during the conversation he would ask me to make a request to Mr. Brown to have him get in touch with him.

Mr. **Ballen**. These were requests for money?

Mr. **MacDonald**. Yes; they were.

Mr. **Ballen**. When did these requests for money from your father to Brown begin?

Mr. **MacDonald**. I'd say the summer of 1987.

Mr. **Ballen**. Did they continue through 1988?

Mr. **MacDonald**. The early part of 1988, yes.

Mr. **Ballen**. Do you know how much money your father was requesting from Bud Brown?

Mr. **MacDonald**. Not exactly. There was a code word for the request.

Mr. **Ballen**. What was that code word?

Mr. **MacDonald**. Golf balls.

Mr. **Ballen**. So when you would request money from Brown for your father, you would ask Brown for golf balls?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. Who gave you that code?

Mr. **MacDonald**. My father.

Mr. **Ballen**. Do you recall when he gave you that code?

Mr. **MacDonald**. Approximately the summer of 1987.

Mr. **Ballen**. How many times did you call, at your father's request, Bud Brown for money?

Mr. **MacDonald**. I'd say approximately five times or more.

Mr. **Ballen**. Five times or more?

Mr. **MacDonald**. Approximately five times.

Mr. **Ballen**. Each time you would ask Brown for golf balls?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. These would be for the chairman?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. How did Brown respond when you asked him for these?

Mr. **MacDonald**. He said he'd contact the chairman.

Mr. **Ballen**. In other words, he knew what you were talking about?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. He didn't ask what you meant by golf balls?

Mr. **MacDonald**. No; he did not.

Mr. **Ballen**. Did Chairman MacDonald ever tell you why he instructed you to use the code, golf balls, for cash?

Mr. **MacDonald**. Well, at that time he felt the telephone line, at least home telephone line, was tapped.

Mr. **Ballen**. So that he wanted to disguise the amount?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. Do you have any idea how much money was it that was being requested or given by Brown to your father?

Mr. **MacDonald**. A golfball was approximately $1,000.

Mr. **Ballen**. Do you have any idea of what the total amount of money was that was involved, or not?

Mr. **MacDonald**. No; I do not.

Mr. **Ballen**. So you're not aware of the precise amount of money that was transferred?

Mr. **MacDonald**. No; I am not.

Mr. **Ballen**. The only payment you knew the precise amount that went from Brown to your father was the $25,000?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. Correct?

Mr. **MacDonald**. That's correct.

Mr. **Ballen**. And to your knowledge that was the only payment between Brown and Chairman MacDonald that there was a record of?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. That's why your father asked for the cover-up?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. And you, your father, and Brown all agreed to go ahead and testify to that story?

Mr. **MacDonald**. Yes.

Mr. **Ballen**. Mr. MacDonald, in fact, you had never asked for the $25,000 from Brown, did you?

Mr. **MacDonald**. No; I did not.

Mr. **Ballen**. You never gave Brown your father's account number, did you?

Mr. **MacDonald**. No; I did not.

Mr. **Ballen**. You never asked Brown to wire that sum to the United New Mexico Bank?

Mr. **MacDonald**. No; I did not.

Mr. **Ballen**. You never agreed to the consulting contract with the loan as an advance on it?

Mr. **MacDonald**. No; I did not.

Mr. **Ballen**. There was no loan to you at all, and the downpayment on the BMW was not made for you, was it?

Mr. **MacDonald**. No; it was not.

Mr. **Ballen**. You never asked for the car?

Mr. **MacDonald**. No.

Mr. **Ballen**. You never asked for the money?

Mr. **MacDonald**. No.

Mr. **Ballen**. You never asked for the cover-up, did you?

Mr. **MacDonald**. No.

Mr. **Ballen**. Sir, why did your father ask you to participate in the false story?

Mr. **MacDonald**. I was the only other explanation available since I owed him the $30,000 off that note.

Mr. **Ballen**. Mr. MacDonald, let me ask you this.

Why did you choose to participate in it?

Mr. **MacDonald**. Because I love my father.

Mr. **Ballen**. Mr. Chairman, that concludes my questioning of Mr. MacDonald.

Senator **DeConcini**. Thank you, Mr. Ballen.

Mr. MacDonald, I have no questions. I think you've gone over it in great detail, and I've read your deposition.

And, I first want to say, Mr. MacDonald, I appreciate your being with us today. I also have some appreciation of the difficult circumstances that this places you in. And I do not take that lightly, and certainly your cooperation here for the reasons you have decided to come forward, including the immunity, is part of our investigation to try to come to grips with the problem of moneys on Indian lands not going to the people that it is for. It is not directed toward any individual, except as the cases are brought to our attention. I want you to know that because of the difficult circumstances, I have some appreciation that you were under.

I also want to thank your counsel for the time that you've spent with our committee, Counsel, for the cooperation and the professionalism in which you have conducted yourself, as well as you, Mr. MacDonald, with no exaggerations or excuses, and only coming forward and telling the story as you know it to be, which is the purpose of this committee inquiry.

Senator McCain, do you have any questions?

Senator **McCain**. Thank you, Mr. Chairman.

I'd just like to echo the sentiments of the Chairman, Mr. MacDonald, in that I know this is a very difficult and a very agonizing experience for you. I hope that time will show, as I believe it will, that you have done the right thing and taken the right course of action. And I'm sure that as you have just responded to counsel in answer to the last question, that you do indeed love your father.

Thank you, Mr. Chairman.

Senator **DeConcini**. Mr. MacDonald and Counsel, our counsel will remain in contact with you for further investigation if necessary, and we welcome hearing from you.

Thank you, gentlemen.

Mr. **MacDonald**. Thank you, Mr. Chairman.

Mr. **Kimerer**. Thank you.

Senator **DeConcini**. The committee concludes its hearings today at this time. We will meet tomorrow morning at 10 a.m., whereupon we will have witnesses starting with Melvin McDonald. We also will hear from Byron T. "Bud" Brown. That will extend probably through noon. We will recess at noon and come back at 2 p.m. and finish with other Navajo tribal witnesses.

The committee stands in recess.

[Whereupon, at 2:40 p.m., the special committee was recessed, to reconvene at 10 a.m. on Tuesday, February 7, 1989.]

FEDERAL GOVERNMENT'S RELATIONSHIP WITH AMERICAN INDIANS

TUESDAY, FEBRUARY 7, 1989

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
SPECIAL COMMITTEE ON INVESTIGATIONS,
Washington, DC.

The special committee met, pursuant to notice, at 10 a.m., in room 216, Hart Senate Office Building, Hon. Dennis DeConcini (chairman of the special committee) presiding.

Present: Senators DeConcini and McCain.

Staff present: Ken Ballen, J. Sedwick Sollers III, John Brandolino, Kathy Momot, and Mary Ellen Fleck.

Senator DECONCINI. The special committee will come to order.

This morning we're going to hear first of all from Melvin McDonald, former U.S. attorney for the District of Arizona. He is counsel and now represents Byron T. "Bud" Brown.

Mr. McDonald, will you please come forward to be put under oath.

Senator MCCAIN. Mr. Chairman.

Senator DECONCINI. Yes? Excuse me, I'm sorry.

While Mr. McDonald is coming, I yield to Senator McCain. I'm sorry.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, COCHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator MCCAIN. Thank you, Mr. Chairman.

Mr. Chairman, I'm deeply troubled by the apparent dereliction of duty by the BIA in this land transaction. It's my understanding that the Bureau of Indian Affairs has ample legal authority under Federal law to review and approve or disapprove contracts involving Indian tribes.

It is also my understanding that in the particular case of the Navajo tribe, the BIA has broad authority to review expenditures of tribal funds.

Other than the statement of the BIA appraiser, Mr. Pencall, it appears that the BIA failed completely to meet its trust responsibility to the Navajo people.

As you and I have discussed, Mr. Chairman, our staff will be interviewing and reviewing the role of the BIA in this entire unhappy episode, and I think that we have a right to know how a fraud of this magnitude could occur.

It seems clear to me at this point that the Bureau did not do its job as we have delegated it to do. So I would look forward at some point to having a BIA witness before this committee to explain more completely their role or, more accurately, their failure to exercise their Constitutional responsibilities in this issue, as they appear at this time.

Thank you, Mr. Chairman.

Senator DECONCINI. Senator, thank you.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA, CHAIRMAN, SPECIAL COMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator DECONCINI. I agree with the Senator from Arizona that we need to pursue and find out as part of our investigations exactly the responsibility of the BIA. I don't believe we have laid that before this committee yet, and I suggest, Senator McCain, that you and I meet with staff here, maybe even today, to be sure that we have laid before the committee here, and if necessary to do further investigations, on what the responsibility of the BIA is, and whether or not they have met that responsibility. Quite frankly, that may lead us to what the responsibility of the Congress is, in either failing to do oversight or failing to grant the necessary authority to the BIA.

I'm not sure, and I think the Senator raises a very good point that we will pursue. I thank him for doing so, and I'm going to ask that he and I and Senator Daschle, if available, meet sometime today to review just exactly what we will present here on the case of the BIA, either nonfeasance, mismanagement, or doing what they did do. I think it's unclear so far.

Mr. McDonald, we welcome you being here, and would you please rise and raise your right hand?

[Witness sworn.]

STATEMENT OF MELVIN A. McDONALD, ESQ., PHOENIX, AZ

Senator DECONCINI. Mr. McDonald, thank you for being here.

Let the record show this is Melvin McDonald, former U.S. attorney for the District of Arizona.

Mr. McDonald, we appreciate your cooperation in our investigations here, and also your record before this committee, which is exemplary as a U.S. attorney in the State of Arizona, and before that as a judge.

I'll yield to Mr. Sollers for the questions.

Mr. SOLLERS. Good morning, Mr. McDonald.

Mr. MCDONALD. Good morning.

Mr. SOLLERS. Where do you live, sir?

Mr. MCDONALD. Phoenix, AZ.

Mr. SOLLERS. How are you currently employed?

Mr. MCDONALD. I'm a partner with the law firm of Jones, Skelton & Hochuli.

Mr. SOLLERS. Just briefly, Mr. McDonald, what is your legal experience?

Mr. McDonald. I graduated from law school in 1968 and moved to Arizona. I was a clerk with the Supreme Court there, a prosecutor for 4 years, Maricopa County Superior Court Judge for 7 years.

I was appointed U.S. Attorney and served during President Reagan's first term in 1981, resigned in 1985, and went to private law practice.

Mr. Sollers. Did there come a time, Mr. McDonald, that you were retained by Byron T. "Bud" Brown?

Mr. McDonald. Yes.

Mr. Sollers. When was that, sir?

Mr. McDonald. August 30, 1988.

Mr. Sollers. Shortly after you were retained, did you learn that Mr. Brown was the target of a United States Senate investigation?

Mr. McDonald. Actually, I learned of that fact the day he came to see me.

Mr. Sollers. What did you learn on that date?

Mr. McDonald. Well, they had—the Senate had sent Mr. Brown a subpoena which was probably the most comprehensive subpoena I've ever seen. It required him to produce documents for a period of 5 years, every imaginable type document he has ever possessed.

Mr. Sollers. Did you then assist Mr. Brown in compiling documents responsive to that subpoena?

Mr. McDonald. Yes; we spent weeks working on that, putting together all of the documents to satisfy the committee's subpoena.

Mr. Sollers. Did you also learn that Mr. Brown was the target of the U.S. Attorney's Office investigation?

Mr. McDonald. Yes; I had learned that shortly after assuming representation on his case.

Mr. Sollers. That is the U.S. attorney's office in Arizona?

Mr. McDonald. Yes.

Mr. Sollers. Now, among the documents that you compiled, were there a promissory note and a consulting agreement?

Mr. McDonald. Yes.

Mr. Sollers. When you first compiled those documents, did you realize the import of them?

Mr. McDonald. Well, yes.

The import at that time suggested on their face that they were promissory notes of monies due by Peter MacDonald, Jr., to my client.

We furnished those documents to the committee, pursuant to your subpoena.

Mr. Sollers. When did you first learn of the true ramifications of these documents—the promissory note and the consulting agreement?

Mr. McDonald. Counsel for this committee had scheduled sworn depositions in Phoenix on November 14, 1988.

That morning, before the deposition, my client and I, in discussing the matter—I realized for the first time that the documents were not true and genuine documents.

Mr. Sollers. Now, during the period you were representing Mr. Brown—and this is before finding out the true import of these documents, on November 14—did you have occasion to meet Peter MacDonald, Sr., and Peter MacDonald, Jr.?

Mr. McDonald. Yes; I did, on one occasion.

Mr. **Sollers**. What were the circumstances of that meeting?

Mr. **McDonald**. On October 21, 1988, Gilbert Ortega, a jeweler in Phoenix, had hosted a reception at his home in honor of Peter MacDonald, Jr., who had passed the Arizona State Bar. There were numerous dignitaries who were there. The Governor of Arizona was there, and others, to pay honor to Peter MacDonald, Jr., for passing the bar.

Mr. **Sollers**. Were particular tributes given to Peter MacDonald, Jr.?

Mr. **McDonald**. Yes.

I gave a tribute, the Governor of Arizona made a wonderful tribute, saying that some day, she hoped that she would be in a position to appoint him to be a judge.

Mr. **Sollers**. Was there anything about that ceremony that later bothered you, when you discovered the true impact or ramifications of those false documents?

Mr. **McDonald**. Yes; I think as we got past November 14, and I began to realize the ramifications of what was involved, that particular event—there was a tremendous outpouring of affection for Rocky MacDonald.

And the impact of the event struck me as unbelievably tragic, that here this young man who had worked so hard to pass the bar had been sucked into something, if you will, that he was never a party to, and the dream that I think the Governor talked about, I could see vanishing in front of me.

Mr. **Sollers**. Now, did your client indeed decide to come clean on the cover-up when he testified on November 14, 1988 before the Senate—before the Senate Counsel?

Mr. **McDonald**. My client indicated that he could not go forward with the false testimony, and indicated to me—and we discussed it—that he would be truthful in the sworn testimony that he would give to you and to Mr. Ballen and to the committee, when that time came.

Mr. **Sollers**. Did you also discover that your client had been receiving substantial pressure to run with the cover story?

Mr. **McDonald**. Yes; we discussed that at length.

It was a rather agonizing moment, and going through the deposition proceedings on the 14th and 15th I could see that he had genuine affection for the Chairman and felt that although he knew that he was doing the right thing, he also realized the impact that this would have on his friend.

Mr. **Sollers**. Just so it's absolutely clear—you were present yesterday, were you not, when Rocky MacDonald was testifying?

Mr. **McDonald**. Yes; I was present.

Mr. **Sollers**. You heard his testimony concerning the cover-up story, did you not?

Mr. **McDonald**. I did.

Mr. **Sollers**. Was that testimony consistent with what Mr. Brown said concerning the cover-up story?

Mr. **McDonald**. Very much so.

Mr. **Sollers**. The cover-up story basically was what?

Mr. **McDonald**. The cover-up story was eventually to shift the focus from the true transaction to a fictitious transaction, where Peter MacDonald, Jr. would be one of the principals. The transfer of money to a New Mexico bank and the acquisition of the BMW would, under the contrived story, be that of Peter MacDonald, Jr., being the participant, rather than his father.

Mr. SOLLERS. The transfer we're talking about is the $25,000 wire transfer?

Mr. MCDONALD. That is correct.

Mr. SOLLERS. The phony promissory note was devised to shift attention from Peter MacDonald, Sr., the chairman, to Rocky MacDonald, is that true?

Mr. MCDONALD. That's correct.

Mr. SOLLERS. Of course, the consulting agreement as well is all part of that cover-up?

Mr. MCDONALD. Yes.

Mr. SOLLERS. Now, Mr. McDonald, were various concerns raised during the deposition which led you to believe, in consultation with Senate counsel, that taping conversations would be necessary?

Mr. MCDONALD. Yes; there were a number of factors that had caused me great concern during the deposition with you and Mr. Ballen.

It became clear to me that there had been some documents that had been altered by Mr. Tracy and Mr. James—one or the other, or both—that had been provided to your committee, which were making allegations against Mr. Brown.

I also realized at the time that if Chairman MacDonald would bring his own son, who had nothing to do with the transaction, and drag him into it, I realized there could be great ramifications against my client. So I realized that there were now at least four people that in some respects were involved in the transaction that might be pointing their fingers at my client, and my client was the one that was telling the truth.

So I concluded that taping would be agreeable to us, and I also felt like it was important to corroborate my client in the truthfulness of his testimony, and also it was very, very important to me, because I felt there would be continuing cover-up efforts by people he had entered into this agreement with. I felt like it was important for his own protection to have a record of what was going on in those meetings.

Mr. SOLLERS. Was it the case that you believed your client was somewhat out on a limb, and there would be other people pointing the finger at him?

Mr. MCDONALD. These were some of the factors that I took into mind. There were many, many factors that he and I discussed, and I concluded that the right thing to do was to agree to permit him to be wired, if you will, so that the future of those meetings with the chairman and with his son Peter, Jr., could be preserved.

Mr. SOLLERS. Were you concerned that these cover-up conversations were actually crimes?

Mr. MCDONALD. I knew they were crimes.

Mr. SOLLERS. What crimes would those be?

Mr. MCDONALD. Well, there was obstruction of justice, obstructing a Congressional investigation, subordination of perjury, just for starters.

Mr. SOLLERS. Was it important to you that your client be protected by tapings in the future?

Mr. McDonald. Absolutely. I felt that the only thing that could come from this would be good. It would confirm and corroborate what he had told you and Mr. Ballen. It would also, I think, lead to the ultimate finding of the truth in this matter.

Mr. Sollers. Shortly after the decision to tape, was a meeting set up between your client and Peter MacDonald, Sr., Chairman of the Navajo Tribe?

Mr. McDonald. Actually it was within 1 week.

Mr. Brown called me and indicated that the chairman and he had spoken, and the chairman was coming the next day.

It was at that time that we actually made the decision to go ahead and permit him to have recording devices placed on his body.

At that time, I called Mr. Ballen and indicated to him that a meeting was going to take place the next night. I didn't have the electronic backup to carry forward with such a venture, and I asked him to cooperate and to help us to carry this forth.

Mr. Sollers. What happened? What preparations were made, and how did the meeting go?

Mr. McDonald. Mr. Ballen took charge. Within a matter of hours, he had lined up electronic support within the State of Arizona—you and Tony Marceca flew out.

At that time, and meeting with Mr. Brown, I could see that he was anguishing at what was about to happen, and was afraid and concerned, so at that time, I concluded that I needed to prepare, if you will, a script that would help him in that meeting with his friend the chairman.

Mr. Sollers. That script was in what form, sir?

Mr. McDonald. The script was in the form of a letter that I'd drafted to my client.

What I did was I essentially, in the letter to my client, reported the false story. In the letter, in reporting the false story, I suggested that this was the story that my client had given to me.

Then, I literally started poking holes through the story, and told my client, when you go into the meeting, you can go over the letter with the chairman, and that will serve as the script to remind you of the critical points that I think need to be brought out.

I might indicate that in doing that, it was a logistical problem, I think, for the committee. I was really the only one in Arizona who could do this, and so after preparing the letter, I called Mr. Ballen and went over it with him, and we both, at the conclusion, were satisfied that this was the proper way to proceed.

Mr. Sollers. By using this letter, would it confirm whether or not the chairman had in fact been pressing for the false cover-up story?

Mr. McDonald. Yes; I was convinced that by publishing in the letter the false story, and then publishing the problems with the false story, that the truth would eventually come out.

Mr. Sollers. Your letter would form the basis for a taped conversation during which your client would be reviewing with the chairman the various problems with the false story?

Mr. McDonald. That is correct.

Mr. Sollers. How did the meeting go down?

Mr. McDonald. Well, there were originally plans—there was a house that was located in Scottsdale, AZ, where various video equipment was set up, and in fact, it was contemplated that a meeting was going to take place at this safe house, if you will.

There were backup plans. There was a vehicle that was obtained by your committee in cooperation with local law enforcement that had transmitting equipment, and Mr. Brown was wired with transmitting equipment under the collars of his shirt. There was a tape recorder placed in his stocking, and he went to the airport, as I recall, and picked up the chairman.

Mr. Sollers. The chairman came in by what means of transportation?

Mr. McDonald. He flew in on one of the King Airs.

Mr. Sollers. Now, was this meeting performed or surveilled in cooperation with local law enforcement in Arizona?

Mr. McDonald. Yes; they participated as well as yourself and Mr. Marceca.

Mr. Sollers. After the chairman flew in on his King Air, did Mr. Brown pick him up?

Mr. McDonald. He picked him up at the airport, and the plan initially as contemplated fell apart.

Mr. Brown was trying to go to this house, and the chairman wanted to go to his son's apartment. So they ended up going to Rocky MacDonald's apartment.

Mr. Sollers. Was Mr. Brown and Chairman MacDonald—were they followed?

Mr. McDonald. Yes.

The follow-vehicle that had the equipment was—they had to stay within close proximity, and as I understand it, the vehicle never lost the proximity with my client's car, and they did go to the residence, and the van was able to sit away from the residence far enough to pick it up so that no one would realize that there was a surveillance taking place.

Mr. Sollers. A conversation did ensue, is that correct?

Mr. McDonald. Yes.

Mr. Sollers. Was that at Peter MacDonald, Jr.'s, apartment?

Mr. McDonald. It was at Peter MacDonald Jr.'s apartment, and involved my client and the chairman.

Mr. Sollers. That conversation was taped, was it not?

Mr. McDonald. Yes.

Mr. Sollers. Did a subsequent conversation then take place at dinner?

Mr. McDonald. Yes.

Mr. Sollers. Was that also taped?

Mr. McDonald. Yes.

Mr. Sollers. Where did your client and Mr. MacDonald go after that?

Mr. McDonald. As I recall, my client took Mr. MacDonald back to the airport, bid farewell, and the chairman got on the King Air and left.

Mr. Sollers. At that time, did the Senate take custody of a number of tapes that had been obtained at that time?

Mr. McDonald. Yes.

That night there were a number of tapes, and there was actually a few less important ones before then—arrangements lined up, and so forth.

Mr. SOLLERS. Just telephone conversations?

Mr. McDONALD. Correct.

Mr. SOLLERS. The Senate took custody of those tapes at that time, is that correct?

Mr. McDONALD. Yes.

Mr. SOLLERS. After that meeting, were there additional meetings?

Mr. McDONALD. There were additional meetings and telephone conversations, both with Chairman MacDonald and his son, Rocky MacDonald.

Mr. SOLLERS. Were those conversations also taped?

Mr. McDONALD. Yes; they were.

Mr. SOLLERS. Mr. Chairman, that concludes my questions.

I'd just personally like to thank Mr. McDonald for his cooperation with this committee. His efforts have been essential to the fact-finding function of the Senate, and we all appreciate that.

Senator DECONCINI. Thank you, Mr. Sollers.

I want to add, Mr. McDonald, having practiced law, I understand the difficult situation that you found yourself in, and that was to advise your client as to the truth and veracity and the seriousness of the subpoenas and the oath that he took.

It's a credit to you and the profession, quite frankly, that kind of representation, and I appreciate it too, that we have been able to work with you in the spirit of protecting your client's interest, which is your first obligation, but also protecting the process, which is the obligation of all of us, to see that it's properly carried out.

I have no questions. I think the testimony was helpful to lay before the Committee the record of how we got into the tapes, and what prompted us in doing this, and the cooperation of you and your client.

Mr. McDONALD. Thank you.

Senator McCAIN. Thank you, Mr. Chairman.

I also want to thank you, Mr. McDonald.

I think your performance as U.S. Attorney was also one that was indeed an excellent service to the people of Arizona, and as a long time resident familiar with these kinds of issues, I would just like an opinion of yours.

Given your knowledge of this land transaction, is there anything that you saw in this land transaction which would have prevented the Navajo tribe from going directly to the original owner and buying it for $25 million or less?

Mr. McDONALD. Senator McCain, as I understand it, the problem with that is, as I have reviewed the documents, that Tenneco did not want to enter into a transaction directly with the tribe. As I understand it, the only way that the tribe could have ever gotten the land was to have somebody that Tenneco would accept, and in fact Tracy Oil was on the documents, and that in my view made the transaction possible.

Senator McCAIN. What was the rationale that Tenneco would have for not wanting to sell to the tribe?

Mr. **McDonald**. I think they were concerned because of the size of the obligation, as I have understood it and reviewed the documents. They wanted somebody else on it.

I don't know what their underlying reasons were, other than it was my understanding that they didn't want to enter into a transaction that would involve payments over a period of time with the tribe. But with Mr. Tracy, they were satisfied in doing any of that.

So I felt there may have been a serious problem with the tribe ever acquiring the land, had they tried to do it directly.

Senator **McCain**. Thank you.

Thank you, Mr. Chairman.

Senator **DeConcini**. Thank you, Mr. McDonald.

We will now proceed to the next witness, Mr. Byron T. "Bud" Brown, of Phoenix, AZ.

Mr. Brown, will you please come forward to be sworn?

[Witness sworn.]

STATEMENT OF BYRON T. "BUD" BROWN, JOHN HALL & ASSOCIATES, PHOENIX, AZ, ACCOMPANIED BY MELVIN McDONALD, ESQ., PHOENIX, AZ

Senator **DeConcini**. Please be seated.

Now, Mr. Brown, I'm going to turn over the questioning to Mr. Ballen.

We will proceed with the immunity provisions, as we have discussed with your counsel.

Mr. **Ballen**. Mr. Brown, please state your full name for the record.

Mr. **Brown**. Byron T. "Bud" Brown.

Mr. **Ballen**. You commonly go by Bud Brown?

Mr. **Brown**. Yes.

Mr. **Ballen**. Sir, what has your relationship been with Peter MacDonald, Sr.?

Mr. **Brown**. Based upon the advice of my attorney, I respectfully refuse to answer your question on the grounds of my Fifth Amendment privilege against self-incrimination.

Senator **DeConcini**. Mr. McDonald and Mr. Brown, I am hereby communicating to you an order issued by the U.S. District Court for the District of Columbia.

The order provides, in substance, that you may not refuse to provide evidence to the Special Committee on Investigations on the basis of your privilege against self-incrimination.

It provides that evidence obtained from you under the order may not be used against you in criminal proceedings. A copy of the order is at the witness table, and without objection will appear in the record, and I ask your counsel to acknowledge receiving it and approving it.

[Copy of the immunity order follows:]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
OCT 12 1988
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

SENATE SELECT COMMITTEE ON
INDIAN AFFAIRS

The United States Senate
Washington, D.C. 20510,

Applicant.

Misc. No. 88-0312

ORDER

Upon consideration of the application by the Senate Select Committee on Indian Affairs, and upon determining that the procedural requirements set forth in 18 U.S.C. § 6005 have been satisfied, it is, this 12th day of October, 1988,

ORDERED That Byron T. (Bud) Brown may not refuse to testify, and provide other information, at proceedings of the Special Committee on Investigations of the Senate Select Committee on Indian Affairs, on the basis of his privilege against self-incrimination, and it is

FURTHER ORDERED That no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against Byron T. (Bud) Brown in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

Aubrey E. Robinson, Jr.
Chief Judge

United States District Court
for the District of Columbia
A TRUE COPY
JAMES F. DAVEY, CLERK
By Linda L. Romine
Deputy Clerk

EXHIBIT # 1 DATE 11/14/88
ELLEN M. HABESKI, RPR
Brown DEPOSITION

Senator **DeConcini**. Pursuant to the order, I direct you to answer the questions put to you, Mr. Brown.

The immunity procedure is completed, and we will proceed with Mr. Ballen's questions.

Mr. **Ballen**. Thank you very much, Mr. Chairman.

Mr. Brown, how do you know Peter MacDonald, Sr.?

Mr. **Brown**. I first met Peter MacDonald, Sr. in 1974, when I was a candidate for the U.S. Congress in the Fourth Congressional District.

I did not win that election—I lost it by 16,000 votes on the Navajo Reservation. I was a Democrat.

Mr. MacDonald came to my home after the election and expressed sorrow that he had to do what he had to do and said, "If I could ever help you in the future, I would like to."

I thought that was a kind gesture, and since that time he and I became good friends.

Mr. **Ballen**. Subsequent to meeting him, Mr. Brown, did he appoint you to a commission on the Navajo Reservation?

Mr. **Brown**. He did.

Mr. **Ballen**. When was that, and what was the commission?

Mr. **Brown**. In 1977 I was asked to serve on the interim management committee of NAPI, Navajo Agricultural Products Industry, for a 90-day period of time. I was elected Chairman of the Board of that committee and served approximately 1 year.

Mr. **Ballen**. During that period of time which you served on NAPI, did you establish a closer relationship with Peter MacDonald?

Mr. **Brown**. Yes; it was my duty to report to the Navajo Tribal Council with either our monthly or quarterly reports as to the progress of the management committee and the running and management of NAPI.

Mr. **Ballen**. Sir, did your relationship with Peter MacDonald continue while MacDonald was out of office between the years 1982 and 1986?

Mr. **Brown**. I believe I only saw Chairman MacDonald one or two times during that 4 year period of time, and that was at a meeting where he came to my office in Phoenix during 1985.

Mr. **Ballen**. Did you discuss a business deal with him at that time?

Mr. **Brown**. We did.

Mr. **Ballen**. What was it?

Mr. **Brown**. We met with Mr. Tom Tracy of Reppel Steel, myself and four or five other people, and discussed the possibilities of moving Reppel Steel Rebar Division to Gallup, New Mexico on an industrial piece of ground that the Navajo Tribe owned.

Mr. **Ballen**. What was to be Peter MacDonald's role in this deal?

Mr. **Brown**. Peter MacDonald would be a member of management, a Navajo advisor, and probably the business manager.

Mr. **Ballen**. Was he to share in the profits?

Mr. **Brown**. He was.

Mr. **Ballen**. What happened with this deal of moving Reppel Steel Rebar Division to Gallup, New Mexico?

Mr. **Brown**. Mr. Tracy, the owner of Reppel Steel, could not cancel all of the leases on his piece of land. It's approximately 17.5

acres adjoining Sky Harbor Airport, and it was our plan to master plan that 17.5 acres with the city of Phoenix and build hotels, apartments, even underground sophisticated transportation systems that would access Sky Harbor Airport.

Mr. BALLEN. Sir, did there come a time that Mr. MacDonald came to you, in 1985 or 1986, seeking your advice?

Mr. BROWN. He did.

Mr. BALLEN. What was that conversation?

Mr. BROWN. He asked if——

Mr. BALLEN. And when was it?

Mr. BROWN. I believe it was the early part of 1986.

The company—excuse me—the company that he represented during this period of time that he was out of office was a company by the name of Cataract, that had been sold. Evidently he was looking at his future, and wanted to contemplate either running for the Fourth Congressional District or for Governor of Arizona, or for the Navajo tribal chairmanship again.

Mr. BALLEN. Did he ask your advice?

Mr. BROWN. He did.

Mr. BALLEN. What did you tell him?

Mr. BROWN. I told him that I would like to think about it, and do some visiting with some friends, and subsequent to that, it was my opinion that his chances at any of the offices that he spoke to me about—it would be better to re-run for the Navajo tribal chairmanship.

Mr. BALLEN. Did you subsequently agree to help Peter MacDonald in his campaign for the Navajo tribal chairmanship?

Mr. BROWN. I did.

Mr. BALLEN. Did you help him raise funds for that campaign?

Mr. BROWN. I attempted to introduce him to some Anglo businessmen who had various interests, and who had in the past or in the future wanted Navajo contracting jobs.

I did arrange a dinner party with several businessmen in Phoenix, and invited Peter to meet them and make their acquaintance.

Mr. BALLEN. As a result of that, were you able to raise some funds for Mr. MacDonald's campaign?

Mr. BROWN. I do not know if any of those businessmen contributed anything in political funds to him. It wasn't that type of a meeting. But I can only assume that they did.

Mr. BALLEN. Did you establish the Peter MacDonald Foundation?

Mr. BROWN. I did.

Mr. BALLEN. When did you do that?

Mr. BROWN. In October 1986, I established at Peter's request, and others, a Peter MacDonald Foundation.

We sponsored a golf tournament. The foundation was to be a beneficial foundation for Indians who needed financial help.

One particular case was the movie actor Will Sampson, who played in One Flew Over the Cuckoo's Nest, who needed a heart and lung transplant and had no funds. There were two Navajo ladies on the Indian reservation who needed heart transplants, and had no funds. That was the primary purpose of that foundation.

Mr. BALLEN. Was there any political purpose to it?

Mr. BROWN. I expect it would be politically helpful to Chairman MacDonald.

Mr. **Ballen**. Did you discuss that with Chairman MacDonald, or Mr. MacDonald at the time, setting up the foundation?

Mr. **Brown**. I listened to his proposition, and decided that it would be a good benefit. I wasn't looking so much at it for his political benefit as I was for my compassion for those types of people.

Mr. **Ballen**. Before Mr. Peter MacDonald was re-elected chairman in November 1986, did you have a discussion with him on what your role would be if he were elected chairman?

Mr. **Brown**. I did.

Mr. **Ballen**. What was that discussion?

Mr. **Brown**. People who would be interested in doing business on the reservation, whether they were contractors, construction people, development people—I would attempt to help him in that endeavor.

Mr. **Ballen**. Did you also discuss with Mr. MacDonald that in locating outside businesses on the reservation, you would attempt to ensure that Mr. MacDonald could personally profit from those businesses?

Mr. **Brown**. That was the general gist of most of our conversations, yes, sir.

Mr. **Ballen**. In fact, as soon as Mr. Peter MacDonald was elected chairman, did you discuss a potential business deal with him, in which he could profit?

Mr. **Brown**. I did.

Mr. **Ballen**. What was that deal?

Mr. **Brown**. We were approached through Mr. Wayne James, who was the accountant/CPA for Reppel Steel——

Mr. **Ballen**. Which is Tom Tracy's company?

Mr. **Brown**. Yes, sir.

Mr. **Ballen**. Go ahead, sir.

Mr. **Brown**. By a company called Maverick Natural Light Beef, whose headquarters were in Denver, CO. They wanted the Navajo Reservation cattlemen to use their Solaire, which is a French strain of cattle that has a naturally leaner—produces a leaner beef product—to locate on the reservation.

I presented that proposal to the chairman. He asked me to investigate it, which I did, and wrote a subsequent report as to my recommendation.

Mr. **Ballen**. Was there an aspect to this Maverick Natural Light Beef deal in which the chairman would personally profit?

Mr. **Brown**. The chairman and myself were offered stock in the corporation, which was a publicly traded stock on the Vancouver Exchange, at a substantially discounted price.

I don't recall the exact figures, but the stock was trading for around $3 or $4 a share, and we were offered stock which we had to purchase. This would be free-trading stock for approximately $1.20 to $1.50 per share.

Mr. **Ballen**. What was the idea behind getting that stock?

Mr. **Brown**. Well, it would be immediately free-trading. I don't recall the exact number of shares, but hundreds or fifty or sixty thousand shares that we could purchase, and immediately sell on the open market at a substantial gain.

Mr. **Ballen**. Wouldn't the idea behind it be that you would buy this stock at a discount before the fact that the Maverick Beef was going to be located on the Navajo Reservation was public, is that correct?

Mr. Brown. That is correct.

Mr. Ballen. Then buy the stock, make the announcement that Maverick Beef was going to be located on the reservation, and then quickly sell the stock for a profit as a result of that announcement?

Mr. Brown. That is correct.

Mr. Ballen. That was the plan, wasn't it?

Mr. Brown. Yes, sir.

Mr. Ballen. What happened to the Maverick Natural Light Beef deal?

Mr. Brown. Nothing. They were wanting the Navajo Tribe to invest approximately $3 million in order to locate the foundation herd of cattle on or near the reservation.

I knew that the timeframe that the Maverick Natural Light people needed to have their funds to do this was not humanly possible. I also knew after investigating that this would not be a proper transaction—insider trading, or whatever, and I simply dropped it, and I advised the chairman that I would have no further interest in it.

Mr. Ballen. Did another idea grow out of the Maverick Natural Light Beef deal?

Mr. Brown. It did.

Mr. Ballen. What was that idea?

Mr. Brown. The Big Boquillas Ranch.

Mr. Ballen. How did that grow out of the Natural Light Beef deal—the Maverick deal?

Mr. Brown. The Navajo Reservation consists of approximately 25,000 square miles. Many of those people are sheep and cattle ranchers. They run various types of livestock—Herefords, Angus, Brangus.

To have a location that would be suitable for the foundation herd to be located, we—I thought that the Boquillas Ranch would be an ideal situation to start a Navajo tribally-owned business entity.

Mr. Ballen. When did you first come up with this particular idea?

Mr. Brown. About December 1986.

Mr. Ballen. Did you know of the land, the Boquillas Ranch, before then?

Mr. Brown. I did.

Mr. Ballen. Did you communicate this idea to Chairman MacDonald?

Mr. Brown. I did.

Mr. Ballen. What was his reaction when you first mentioned it to him?

Mr. Brown. He was interested to see if the land would become available.

Mr. Ballen. When you first discussed the transaction with him, how was it discussed? Was it discussed that you would buy the land, and then resell it to the tribe for a profit?

Mr. Brown. No.

When we first discussed it, Tenneco was in escrow to another purchaser. We would not know whether that other purchaser would purchase the ranch until after the date of January 1, 1987.

Mr. Ballen. Mr. Brown, did you take a trip to Hawaii with Chairman MacDonald and his family?

Mr. Brown. I did.

Mr. Ballen. Whose idea was the trip?

Mr. Brown. Chairman MacDonald's.

Mr. Ballen. What did he say to you?

Mr. Brown. It was after the election. He said that he——

Mr. Ballen. About what time was that, after the election?

Mr. Brown. The election was in November. This would have been the end of November and the first part of December 1986.

Mr. Ballen. What did Mr. MacDonald say to you?

Mr. Brown. He said that he and his wife would like to get away to a warm climate.

Mr. Ballen. Did he suggest a location?

Mr. Brown. He suggested the Caribbean. I—he asked my wife and I to go along with him, and I mentioned that to Mr. Tracy. And he said he had a friend who owned a home in Hawaii, and why didn't we just go to Hawaii and use his friend's home?

Mr. Ballen. What was the understanding of who was going to pay for this trip?

Mr. Brown. I was going to pay for it.

Mr. Ballen. Did you have the funds available to pay for it?

Mr. Brown. Not at that time.

Mr. Ballen. Did you take out a loan of $20,000 to pay for the trip?

Mr. Brown. I did.

Mr. Ballen. From which bank?

Mr. Brown. The Ranch National Bank of Scottsdale.

Mr. Ballen. Why were you willing to take out a loan to pay for the trip for Chairman MacDonald and his family?

Mr. Brown. It would establish a good business relationship, I felt, and in the Anglo world that I do business in, it was acceptable.

Mr. Ballen. Well, Mr. Brown, isn't it a fact that you wanted to take him on this trip so that you could discuss the Maverick Beef deal, possibly the Big Boquillas Ranch, and other ventures that the two of you could personally profit from?

Mr. Brown. That's correct.

Mr. Ballen. Who went to Hawaii?

Mr. Brown. Sir?

Mr. Ballen. Who went to Hawaii?

Mr. Brown. Mr. and Mrs. MacDonald, and my wife and I, and then subsequently their oldest daughter came over to Hawaii.

Mr. Ballen. Which islands did you go to?

Mr. Brown. We went to the big island, stayed at a private residence at Kona. We traveled to Maui, where we played golf.

Mr. Ballen. Sir, what did you pay for on this trip?

Mr. Brown. Approximately $5,000 to $10,000.

Mr. Ballen. Did you pay for hotels, rooms, meals, and airplane tickets for Peter MacDonald and his family?

Mr. Brown. I did.

Mr. Ballen. What were your exact discussions with Chairman MacDonald, if any, on the trip, concerning the Big Boquillas Ranch?

Mr. Brown. A Mr. Wayne James and one of his business partners flew to Hawaii and presented the Maverick Natural Light Beef program to the chairman.

After that time, the chairman and I had discussed the potential of that business venture in combination with the Boquillas Ranch.

Mr. Ballen. Did you discuss with the chairman that you would be acting, at that time, as the middleman in this transaction?

Mr. Brown. No; we did not, because we didn't know at that time whether the ranch would even be for sale, or not.

Mr. Ballen. Did MacDonald agree that you should find out whether the Big Boquillas Ranch would be for sale?

Mr. Brown. He did.

Mr. Ballen. After your trip to Hawaii, Mr. Brown, did you contact Tenneco, the owner of the land?

Mr. Brown. I did.

Mr. Ballen. When was that?

Mr. Brown. I believe I made a phone call to Mr. Mel Jans at Bakersfield on January 2, to find out if in fact the ranch was for sale.

Mr. Ballen. Before you called Mr. Jans, did you have any further discussions with Chairman MacDonald, between the end of the Hawaii trip in December, early December of 1987 and your call to Jans in early January?

Mr. Brown. They were sketchy, but we probably did—yes.

Mr. Ballen. What was the substance of those conversations with the chairman?

Mr. Brown. If the ranch became available, let's see what their price is, and let's see what terms can be worked out.

Mr. Ballen. Mr. Brown, what happened during your phone call to Mr. Jans on January 2 or thereabouts?

Mr. Brown. He informed me that the escrow with the buyer had not closed. I set up a meeting——

Mr. Ballen. This was another buyer, a private buyer of the land?

Mr. Brown. Yes.

Mr. Ballen. Proceed, please.

Mr. Brown. I made an appointment to go to Bakersfield. I flew over and met with Mr. Jans.

He said the ranch was available. We discussed the price of the ranch, the terms, and he priced the ranch at that time for $26,250,000, including transferring their and all of the State leases, which the State of Arizona had leased to Tenneco, all of their water rights, and no minerals.

Mr. Ballen. Did you discuss with him a commission that you could get for selling the land?

Mr. Brown. I did.

Mr. Ballen. Did you come to any agreement as to terms on the commission?

Mr. Brown. We did.

Mr. Ballen. What were those terms?

Mr. Brown. They would pay me a commission as a real estate broker of $750,000.

Mr. Ballen. Did you enter into an agreement with Tenneco to that effect?

Mr. BROWN. Not at that time, but subsequent to that time, I did.

Mr. BALLEN. Now, sir, after you found out that the ranch, the Big Boquillas Ranch, would be for sale from Tenneco—now, Tenneco is a major corporation?

Mr. BROWN. They are a publicly held company, listed on the New York Exchange.

Mr. BALLEN. After finding out that the ranch would be available from Tenneco for sale, what did you do?

Mr. BROWN. I reported that communication back to Chairman MacDonald.

Mr. BALLEN. Did you meet with him?

Mr. BROWN. I did.

Mr. BALLEN. Where?

Mr. BROWN. In Window Rock, AZ.

Mr. BALLEN. When?

Mr. BROWN. This was approximately January 7-9—in that area.

Mr. BALLEN. Before he was inaugurated?

Mr. BROWN. Yes, sir.

Mr. BALLEN. When was he inaugurated chairman of the tribe?

Mr. BROWN. I believe it was January 13, 1987.

Mr. BALLEN. Who was present in your meeting at Window Rock with Chairman MacDonald?

Mr. BROWN. He and I.

Mr. BALLEN. What exactly did you say to him?

Mr. BROWN. I told him that the ranch was available. I told him that it had been priced at $26,250,000 cash, that excluded the minerals, but it included the State lease transfers and the water rights, all of the buildings that were owned by Tenneco, and no livestock.

Mr. BALLEN. What else did you tell him?

Mr. BROWN. I told him that I thought the ranch was worth more than that, and I thought we could buy it, double-escrow it, or flip it, and sell it.

Mr. BALLEN. To whom?

Mr. BROWN. I had talked to Mr. Tracy prior to this time and Mr. Tracy said yes, he'd be interested in purchasing the ranch.

Mr. BALLEN. Whom would you flip the ranch to? Did you tell the chairman that?

Mr. BROWN. To the Navajo Tribe.

Mr. BALLEN. Did you tell him that you would buy the land at a lower price and resell it to the tribe for a profit to yourself?

Mr. BROWN. I did.

Mr. BALLEN. How did he respond when you told him of the nature of this transaction?

Mr. BROWN. He smiled and said, "I assume that I'll be taken care of."

Mr. BALLEN. How did you respond when he said "I assume I'll be taken care of"?

Mr. BROWN. I said, "Certainly."

Mr. BALLEN. Was there any specific deal struck at that time between you and Mr. MacDonald, as to exactly how he would be taken care of out of the profits from you flipping the land of the Navajo Nation?

Mr. BROWN. Not at that time.

There was a—it was left in that situation, that he would be taken care of. A dollar amount was not arrived at, nor was a percentage arrived at.

Mr. **Ballen**. Had Mr. MacDonald ever asked to be paid on a transaction with the tribe when you had a business deal with the tribe, since he was re-elected, before this one?

In fact, that was the deal on the Maverick Beef, wasn't it?

Mr. **Brown**. Yes.

Mr. **Ballen**. Now, in return for his being taken care of what, if anything, did MacDonald tell you he would do to ensure that this transaction went through?

Mr. **Brown**. He would give me the road map, point me in the right direction. He told me where I started with Land Administration, from Land Administration it goes to Resources Committee. From Resources Committee to Budget and Finance Committee, from Budget and Finance to Advisory Committee, and from Advisory Committee a vote by the Tribal Council.

Mr. **Ballen**. Did he tell you he would give it his personal attention to see that this transaction went through?

Mr. **Brown**. He did.

Mr. **Ballen**. In fact, you relied on that, did you not?

Mr. **Brown**. I did.

Mr. **Ballen**. You said you approached Tom Tracy.

Why did you approach Tom Tracy to participate in the transaction?

Mr. **Brown**. Tom Tracy is a rancher. Tom Tracy has a financial network strong enough to substantiate the purchase of a $25 million piece of property.

Mr. **Ballen**. So he had the funds available. You didn't have the funds?

Mr. **Brown**. That is correct.

Mr. **Ballen**. Did you discuss Tracy with MacDonald as being involved in this deal?

Mr. **Brown**. I did.

Mr. **Ballen**. How did MacDonald react to that?

Mr. **Brown**. Favorably.

Mr. **Ballen**. Mr. Brown, within days of striking your agreement with Chairman MacDonald that he'd be taken care of on this transaction, did you hear from Mr. MacDonald?

Mr. **Brown**. I did.

Mr. **Ballen**. Do you recall where you heard from him?

Mr. **Brown**. I believe I went to Window Rock—excuse me, would you give me the dates again, please?

Mr. **Ballen**. When did you hear from him after this initial conversation? Was it during the time of the inaugural?

Mr. **Brown**. Yes, sir.

Mr. **Ballen**. Where was that?

Mr. **Brown**. At Window Rock, AZ.

Mr. **Ballen**. Who was present?

Mr. **Brown**. He and I.

Mr. **Ballen**. What did MacDonald say at that time?

Mr. **Brown**. He asked if the deal was working, and I explained that it was, and he then relayed to me that he had a request. He needed $25,000 to pay a note at the United Bank of Gallup, and in that same timeframe, a request for a new BMW.

Mr. BALLEN. MacDonald asked you for a new BMW?

Mr. BROWN. Yes, sir.

Mr. BALLEN. That was for him?

Mr. BROWN. Yes, sir.

Mr. BALLEN. The $25,000 was also for him?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Now, you testified that you got Tom Tracy involved in the transaction because he had the financial net worth to buy this particular piece of property.

What did you tell Tracy about the deal when you spoke to him?

Mr. BROWN. I told Tracy that MacDonald was in favor of the transaction, and that we should proceed.

Mr. BALLEN. Did you tell Tracy that you would buy the land at a lower price, and sell it to the tribe at a substantial profit?

Mr. BROWN. Yes; I thought we could.

Mr. BALLEN. What did you tell him, if anything, in reference to Peter MacDonald's participation in this transaction?

Mr. BROWN. I told him that I had assured Chairman MacDonald that he would be taken care of.

Mr. BALLEN. Did you describe specifically how MacDonald would be taken care of to Tom Tracy?

Mr. BROWN. I think after we had made our deal—and by making our deal, I mean after Tracy had made the down payment to Tenneco and Tracy and I had contracted one with the other as to our contractual arrangements—I had told Tracy that the fee would be, or the profit, not the fee—the profits on the sale would be shared, and we contracted by contract that Tracy would receive one-third of the profits, and I was to receive two-thirds, and out of that two-thirds, I was to take care of the chairman.

Mr. BALLEN. Did you tell him that you would give one-third of the profits to Peter MacDonald?

Mr. BROWN. I did.

Mr. BALLEN. At the time you told Tracy that, had you actually come to that arrangement with Peter MacDonald?

Mr. BROWN. No, sir.

Mr. BALLEN. Why is it that you told Tracy that, then, if you hadn't come to that arrangement?

Mr. BROWN. In the sale of Reppel Steel, which I furnished the buyer for, and also for the land subsequently, Mr. Tracy contracted with me for approximately $850,000 fee.

He since reneged on that fee, and I told Mr. Tracy that the one-third, two-thirds split was acceptable to me and to Mr. MacDonald. Subsequent to that, I told Chairman MacDonald the same story, and this was the only way that I could get my $850,000 fee from Mr. Tracy.

Mr. BALLEN. All right. We'll come to your conversation with Mr. MacDonald about the split at the chronological point in time in which it occurred.

Within days of striking your agreement with the chairman that he would be taken care of, he made a request for $25,000, is that your testimony?

Mr. BROWN. He did.

Mr. BALLEN. Your testimony was that he did so sometime during the week of the inaugural, in January?

Mr. BROWN. Yes, sir.

Mr. BALLEN. What exactly did MacDonald say when he asked for the $25,000?

Mr. BROWN. He said that he had a note at the bank in the amount of $60,000, and it——

Mr. BALLEN. Did he specify the bank?

Mr. BROWN. Yes, sir; he did.

Mr. BALLEN. What bank?

Mr. BROWN. The United Bank of Gallup, New Mexico.

Mr. BALLEN. What did he tell you about this note?

Mr. BROWN. That it was—he had renewed it two or three times, and it was urgent that he make a decrease on the principal.

Mr. BALLEN. Did he say the amount?

Mr. BROWN. He specified $25,000.

Mr. BALLEN. Did he specify how he wanted this payment of $25,000 to be made to him?

Mr. BROWN. He did not.

Mr. BALLEN. Did you have the $25,000 at that time to pay MacDonald?

Mr. BROWN. No, sir.

Mr. BALLEN. So what did you do?

Mr. BROWN. I went to Tom Tracy and told him that there was a need to reduce the note at the bank. I then went to the bank at Gallup, New Mexico, talked to the banker, got the account number, relayed that back to Mr. Tracy, and he made a wire transfer of $25,000 to the bank.

Mr. BALLEN. Let me ask you this question.

When you went to Mr. Tracy and said there was a need for $25,000 for MacDonald, how did Tracy respond to that?

Mr. BROWN. He said, "We'll handle it." He did.

Mr. BALLEN. Now, did Mr. Tracy subsequently charge the $25,000 off as an expense from the Big Boquillas transaction?

Mr. BROWN. He did.

Mr. BALLEN. Did you discuss whether or not Mr. Brown's payment of $25,000 would be part of MacDonald's one-third share, or was it characterized in another way?

Mr. BROWN. It was characterized in another way.

It was listed as an expense by Mr. Tracy.

Mr. BALLEN. And charged as an expense in the transaction?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Do you recognize the notes that have already been admitted into evidence before this committee?

[See p. 362.]

Mr. BROWN. I do.

Mr. BALLEN. What are those notes?

Mr. BROWN. Those are handwritten notes by, I believe, Mr. Wayne James, Mr. Tracy's accountant, listing the various Big Boquillas expenses.

Mr. BALLEN. Is there a column that lists that PM expenses?

Mr. BROWN. Would you point it out to me, please?

Yes, sir.

Mr. **Ballen**. To your knowledge, does that reflect the wire transfer?

Mr. **Brown**. It does.

Mr. **Ballen**. Now, when you went to Tracy to ask him for the $25,000, did you specify how that payment was to be made to Peter MacDonald—whether it would be made by cash, check, wire transfer or other means?

Mr. **Brown**. No, sir.

At that time, Mr. Tracy owed me a substantial sum of money, and he said, "I'll handle it."

He called the bank, verified the account number, and made the wire transfer directly to the bank.

Mr. **Ballen**. Did you also call the banker and get the account number?

Mr. **Brown**. I had gone to the United Bank and in fact met with the banker at the airport and verified the account number.

Mr. **Ballen**. Did Tracy tell you why he wanted to wire transfer the funds to Peter MacDonald?

Mr. **Brown**. He wanted Peter MacDonald to know that he was doing this for him.

Mr. **Ballen**. Did you discuss with MacDonald that the funds would be coming by wire transfer, as opposed to a cash payment or a check or a money order or other means?

Mr. **Brown**. I believe I did.

Mr. **Ballen**. How did MacDonald react?

Mr. **Brown**. No reaction. He was glad that it had been handled, and he was satisfied.

Mr. **Ballen**. May I ask you this—the money was wire transferred. Was there a lack of trust between you and Tom Tracy at this point in time?

Mr. **Brown**. There evidently was.

He didn't trust me, and I didn't particularly trust him.

Mr. **Ballen**. He didn't trust you, if he gave you the money, that it would all go to Peter MacDonald, is that right?

Mr. **Brown**. I assume that might be a fair statement.

Mr. **Ballen**. Sir, I'd like to direct your attention to two wire transfer documents, one from the Valley National Bank of Arizona, which reflects an outgoing wire of $25,000, to the United New Mexico Bank, and an incoming wire into the account of Peter MacDonald from the United New Mexico Bank, which reflects receipt of $25,000.

[See pp. 363, 364.]

Do those documents reflect the $25,000 that you and Tom Tracy wired to Mr. Peter MacDonald at his request?

Mr. **Brown**. They do.

Mr. **Ballen**. Now, did Mr. MacDonald ever acknowledge receipt of the $25,000 after it was wired?

Mr. **Brown**. He did.

Mr. **Ballen**. What did he say?

Mr. **Brown**. He appreciated it, and he was very gratuitous in his remarks to me and to Mr. Tracy.

Mr. **Ballen**. Did he renew his pledge to push through the Big Bo transaction at that time?

Mr. **Brown**. He did.

Mr. BALLEN. Now, in January, you testified that MacDonald also asked you for a BMW.

Mr. BROWN. He did.

Mr. BALLEN. What kind of BMW did he ask for?

Mr. BROWN. He specified a new, four-door gray or black, with all the goodies—radar detectors, 1987 model.

Mr. BALLEN. What was the value of that car at the time?

Mr. BROWN. I didn't know. I know now that it was about $55,000.

Mr. BALLEN. Did MacDonald say whether or not he wanted you to purchase the car for him?

Mr. BROWN. He just requested that we get one.

Mr. BALLEN. He didn't specify how?

Mr. BROWN. No, sir.

Mr. BALLEN. What happened as a result of Mr. MacDonald's request? Did you have the funds available to purchase such a car?

Mr. BROWN. No, sir.

I contacted a party that I knew in the BMW business and wasn't getting anywhere—Mr. Wayne James is also a licensed automobile dealer.

I relayed the information to Mr. Tracy. Mr. James located a vehicle at the Audi BMW place on Camelback Road.

Mr. BALLEN. In Phoenix, AZ?

Mr. BROWN. Sir?

Mr. BALLEN. In Phoenix, AZ?

Mr. BROWN. In Phoenix, AZ, and made arrangements to lease the vehicle.

Mr. BALLEN. Who negotiated the terms of the lease?

Mr. BROWN. Mr. Wayne James.

Mr. BALLEN. Did you visit the dealership as well?

Mr. BROWN. I did.

Mr. BALLEN. And discuss possible cars?

Mr. BROWN. I did.

Mr. BALLEN. Did you inform MacDonald of the fact that you were leasing the car, instead of purchasing?

Mr. BROWN. We did.

Mr. BALLEN. How did he react to that?

Mr. BROWN. He filled out the lease credit application, signed it.

Mr. BALLEN. Who was to make the down payment on the lease, though?

Mr. BROWN. Mr. Tom Tracy gave me a check for $3,000, made out to me, which I cashed and gave to the dealership. That was the up-front lease payment money.

Mr. BALLEN. What arrangements did you make for the delivery of the car?

Mr. BROWN. The salesman who sold the car drove the car to deliver it to Mr. Peter MacDonald at Flagstaff, Arizona, and I flew up, I flew Mr. Tracy's plane up and picked the salesman up and brought him back.

Mr. BALLEN. Mr. Brown, the document that just has been placed before you, is that the lease of the BMW in question?

[See pp. 365–367.]

Mr. BROWN. It is.

Mr. BALLEN. Peter MacDonald Jr. identified his father's signature on that lease.

Is that, to your knowledge, his father's signature?

Mr. Brown. It is.

Mr. Ballen. You testified that the car was delivered to Flagstaff, to MacDonald's home there, is that correct?

Mr. Brown. Yes, sir.

Mr. Ballen. After MacDonald received the car, did he like it?

Mr. Brown. No.

Mr. Ballen. Why not?

Mr. Brown. It was an 1986, and he wanted a 1987.

Mr. Ballen. He told you that?

Mr. Brown. He did.

Mr. Ballen. Even though the car had all of the extras—the radar, and everything else that he had requested?

Mr. Brown. Yes, sir.

Mr. Ballen. Was the $3,000 down payment that you made on the car also charged as an expense on the Big Boquillas transaction?

Mr. Brown. It was.

Mr. Ballen. Is it reflected, again, on Wayne James' notes of Peter MacDonald's expenses on the transaction?

Mr. Brown. It is.

Mr. Ballen. Now, your understanding with Tracy, dividing the profits from the sale—was that one-third to Tracy and two-thirds to you?

Mr. Brown. That is correct.

Mr. Ballen. With one-third to Peter MacDonald?

Mr. Brown. After the adjustments, yes, sir.

Mr. Ballen. Now, who was going to take care of MacDonald's one-third? Was that you, or Mr. Tracy?

Mr. Brown. I was.

Mr. Ballen. Did you sign an agreement with Tom Tracy dividing the profits in the deal?

Mr. Brown. I did.

Mr. Ballen. Let me direct your attention to that exhibit. Is that the agreement you signed, sir, which has just been placed up on the exhibit board?

[See p. 368.]

Mr. Brown. It is.

Mr. Ballen. Is that your signature?

Mr. Brown. It is.

Mr. Ballen. Tom Tracy's signature?

Mr. Brown. It is.

Mr. Ballen. Now, was there any plan as to who was to make the lease payments on the car?

Mr. Brown. It was never discussed, but when the first lease payment became due, I received a phone call.

Mr. Ballen. From whom?

Mr. Brown. Peter MacDonald.

Mr. Ballen. What did he ask for?

Mr. Brown. Would you please make the lease payment.

Mr. Ballen. Did you proceed to do so?

Mr. Brown. I transmitted that information to Mr. Tracy, and he wrote me a check for $900. I cashed it and made the lease payment.

Mr. BALLEN. Did you make the first two lease payments by asking Tom Tracy for the money, after Peter MacDonald asked for the payments?

Mr. BROWN. I did.

Mr. BALLEN. Did you subsequently make lease payments on the car?

Mr. BROWN. I believe I gave some cash to Peter MacDonald Jr. I'm not sure—that made two or three lease payments.

Mr. BALLEN. Peter MacDonald, Jr. testified here yesterday that his father made absolutely no lease payments on the car, and that they came from you or Tracy—is that correct?

Mr. BROWN. I would assume so, yes, sir.

Mr. BALLEN. These payments as well were charged on the Big Boquillas transaction?

Mr. BROWN. Yes.

Mr. BALLEN. Now, after you made your initial deal on this transaction, with Peter MacDonald and Tom Tracy, did you proceed to contact Tenneco to solidify the purchase of the ranch?

Mr. BROWN. I did.

Mr. BALLEN. What did you do?

Mr. BROWN. I went back to see Mr. Mel Jans. I believe Mr. Tracy went with me at that time.

We negotiated a price with terms, I believe the terms were ten year financing, nine percent interest with a 30-year amortization schedule, with a down payment of approximately $3.5 million, $4 million.

Mr. BALLEN. Am I correct in stating that nothing happened before you went to Tenneco—nothing happened on the deal until you had paid MacDonald the $25,000 and the BMW car, is that correct?

Mr. BROWN. That's correct.

Mr. BALLEN. Directing your attention to approximately March, 1987—did you have another conversation with Peter MacDonald concerning his share of this profit?

Mr. BROWN. I did.

Mr. BALLEN. What was that conversation?

Mr. BROWN. That was the conversation that I relayed earlier, that I had made this contract with Tom Tracy, and that I expected to receive my funds that he owed me, that approximately $850,000 that would be deducted, and that would reduce the net profits that Tracy and I made, less our expenses that would be shared with Chairman MacDonald.

Mr. BALLEN. Did you tell MacDonald that he would get one-third of the profits from this transaction less the $850,000 that Tracy had owed you from the sale of Reppel Steel?

Mr. BROWN. Less that amount, less our expenses and the commission that I received from Tenneco which was not to be shared with anybody.

Mr. BALLEN. Did you discuss at that time what your profit on the deal was going to be? How much you were going to offer the land for to the Navajo Nation?

Mr. BROWN. I don't think at that time we knew, because in the negotiations that we did with Tenneco, we received 50 percent of the mineral rights, which had never been offered to any other prospective purchaser.

I believe that these mineral rights have significant value, and we were contemplating what price—whether we kept those mineral rights and did not resell them to the Navajo Tribe, or whether we would throw them in.

We decided that we would attempt to sell to the Navajo Tribe everything that we purchased from Tenneco, that included all the minerals.

Mr. BALLEN. Let me pose this question to you, Mr. Brown.

At the time that you were contemplating buying the land for in the neighborhood of $25, $26 million, is that true?

Mr. BROWN. It was $26,250,000. Yes, sir.

Mr. BALLEN. The proposed selling price to the Navajo was in the neighborhood of $33 million, is that true?

Mr. BROWN. Yes, sir.

We arrived at—that $33 million was arrived at at a price of $68 per acre for the deeded land. That was the way that $33 million figure was arrived at.

Mr. BALLEN. Those figures were on the table, were they not, when you had the conversation with Peter MacDonald that he would be sharing in one-third of the profits, less expenses, less the $850,000 on the Reppel Steel?

Mr. BROWN. Yes, sir.

Mr. BALLEN. So that he had in his mind a substantial sum of money?

Mr. BROWN. He did.

Mr. BALLEN. What steps did you then take to ensure that the transaction of purchasing this land went through?

Mr. BROWN. I acted as the salesman. I practically lived at Window Rock for the period of 6 months, 7 months—flying various members of the Navajo Tribe over the ranch, to the ranch. I rented buses, took every member of the tribal council out there that wanted to go, took the committee members, took them to Phoenix, met with the attorneys, negotiated the deal.

Mr. BALLEN. During this period of time, Mr. Brown, did MacDonald ask for any more payments to him, personally?

Mr. BROWN. There was a period of time—I believe it was May 22—that the Navajo Tribe made a downpayment to Tracy Oil and Gas in the amount of $500,000.

Mr. BALLEN. What occurred after that?

Mr. BROWN. Out of that $500,000, Mr. Tracy reimbursed himself $350,000 that he had by contract paid Tenneco, paid himself $100,000, and gave me $50,000, of which chairman MacDonald requested $5,000—and I gave it to him.

Mr. BALLEN. When was that?

Mr. BROWN. In the latter part of May or early June 1967.

Mr. BALLEN. What date?

Mr. BROWN. Excuse me, 1987.

Mr. BALLEN. Where did you give MacDonald the $5,000?

Mr. BROWN. He came to Phoenix, AZ, and I gave it to him in Scottsdale.

Mr. BALLEN. Did you write a check to cash to get it?

Mr. BROWN. I did.

Mr. BALLEN. What bank?

Mr. BROWN. The Arizona Bank.

Mr. BALLEN. Did there come a point in time when any other tribal official asked you for funds?

Mr. BROWN. There was.

Mr. BALLEN. When was that?

Mr. BROWN. Later in the year—later in June, or May, in New York City.

Mr. BALLEN. How much was requested?

Mr. BROWN. It was $18,000.

Mr. BALLEN. What did you do after you got this request? What was it for? Did the person say what it was for?

Mr. BROWN. He had an Internal Revenue problem. He needed $18,000 to get it solved.

Mr. BALLEN. Who was this official?

Mr. BROWN. Mr. Mike Upshaw, the Attorney General for the Navajo Tribe.

Mr. BALLEN. How did you respond when he asked you for the money?

Mr. BROWN. I told him I would think about it.

Mr. BALLEN. What did you proceed to do?

Mr. BROWN. I reported the conversation to Chairman MacDonald.

Mr. BALLEN. What did he say?

Mr. BROWN. Don't pay him.

Mr. BALLEN. Do you know why he told you not to pay him?

Mr. BROWN. No.

Mr. BALLEN. Did you pay him?

Mr. BROWN. No.

Mr. BALLEN. Did he ever ask you for it again?

Mr. BROWN. No.

Mr. BALLEN. Mr. Brown, when did the Big Boquillas transaction close?

Mr. BROWN. July 8, 1987.

Mr. BALLEN. How much did you sell the property to the tribe for?

Mr. BROWN. Approximately $33 million.

Mr. BALLEN. What was your profit, to be shared with MacDonald?

Mr. BROWN. Approximately—after tax, after deductions, approximately $1.7 to $1.8 million.

Mr. BALLEN. Had you discussed any other deals at that time with Chairman MacDonald, business deals that you could be involved in?

Mr. BROWN. There was a move being made to cancel the lease of a company by the name of Seva Development Corporation, that had the lease at Lake Powell. And the chairman requested that I find a company of substantial—of enough substance, that had at least a $40 million to $50 million cash availability that might be interested in writing a new lease with the Navajo Tribe to build a hotel, marinas.

Mr. BALLEN. Was there any discussion in that context of personal profit to you or to MacDonald?

Mr. BROWN. Not at that time, no, sir.

Mr. BALLEN. When you say "not at that time," was there any subsequent?

Mr. BROWN. The chairman had told me about his desire to get bingo, and he was dealing with some people there. But I didn't enter into it. I wasn't privy to whether or not he was specifying that he was going to receive funds for it.

Mr. BALLEN. Mr. Brown, what was your first conversation with Peter MacDonald after the closing of the Big Boquillas Ranch?

Mr. BROWN. We had a formal closing ceremony, I believe, at the Flagstaff Little America Inn in Flagstaff, where Mr. Tracy signed the deeds over to the Navajo Tribe. And I believe that was on July 9 or July 10. I'm not sure of the date.

Mr. BALLEN. And when after that would you have your first conversation with Peter MacDonald, if you know?

Mr. BROWN. Excuse me just a moment.

May I consult with my counsel?

[Mr. Brown, aside with counsel.]

Mr. BROWN. There was a request made to me by the Chairman that he needed some money.

Mr. BALLEN. When was that request? What did he say?

Mr. BROWN. He requested $5,000, and he requested some "gittas".

Mr. BALLEN. Some what?

Mr. BROWN. Gittas.

Mr. BALLEN. What's gittas?

Mr. BROWN. That's a Marine Corps slang word for money.

Mr. BALLEN. That was the term he used?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Did he call you up on the phone?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Where did he call you?

Mr. BROWN. At my residence in Scottsdale.

Mr. BALLEN. When was that?

Mr. BROWN. Right after the closing—probably July 14, or 15.

Mr. BALLEN. That was your original understanding with him, that he would be paid as a result of the transaction?

Mr. BROWN. Yes.

Mr. BALLEN. Did you subsequently meet with him?

Mr. BROWN. I did.

Mr. BALLEN. Where?

Mr. BROWN. I believe it was Oklahoma City. We were playing in a golf tournament there. I think my records reflect that I wrote a check to cash on August 12 in the amount of $5,000.

[See p. 370.]

Mr. BALLEN. Is that a copy of your check?

Mr. BROWN. It is.

Mr. BALLEN. Is that your signature?

Mr. BROWN. It is.

Mr. BALLEN. Why did you write "expenses" for what the check was for?

Mr. BROWN. I really can't answer that. I don't know why I did. I guess it was my way of identifying what the check was for.

Mr. BALLEN. Sir, after the Big Boquillas transaction closed, what was the total amount of money that you expected to pay Chairman MacDonald, based on your discussions with him?

Mr. BROWN. From $500,000 to $750,000.

Mr. BALLEN. And that would be his third, less the Reppel Steel funds, and less taxes?

Mr. BROWN. Yes, sir.

Mr. BALLEN. This would be a tax-free transfer to Mr. MacDonald?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Presumably he wasn't going to report it.

Mr. BROWN. I don't know, but I know that I reported every cent of it.

Mr. BALLEN. All right.

You made in the neighborhood of $4 million to $5 million in profit?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Did you report that?

Mr. BROWN. I did.

Mr. BALLEN. You paid taxes on it?

Mr. BROWN. I did.

Mr. BALLEN. Now, you just testified that you expected to pay Mr. MacDonald between $500,000 and $750,000.

Was there adverse publicity at the time the Big Boquillas transaction closed?

Mr. BROWN. There was.

Mr. BALLEN. To the effect that you were a friend of Chairman MacDonald's, and to the effect that this land was flipped, is that correct?

Mr. BROWN. That's correct.

Mr. BALLEN. Shortly thereafter, did an investigation begin, too, of the circumstances behind this transaction?

Mr. BROWN. It did.

Mr. BALLEN. Was there an advantage—well, let me ask you this question.

Mr. MacDonald asked for gittas, is that correct?

Mr. BROWN. That's correct.

Mr. BALLEN. When you met with him in Oklahoma City, you paid him how much?

Mr. BROWN. It was $5,000.

Mr. BALLEN. Where did you pay him the money?

Mr. BROWN. In my hotel room.

Mr. BALLEN. What denominations were the bills in?

Mr. BROWN. They were in $100 denominations.

Mr. BALLEN. Did you hand him the money loose?

Mr. BROWN. No, sir; it was in an envelope.

Mr. BALLEN. What did MacDonald say when he gave you the money?

Mr. BROWN. He smiled, and said thank you.

Mr. BALLEN. Now, you didn't give him the $500,000 or the $750,000, or the large sum of money at that time, did you?

Mr. BROWN. No, sir.

Mr. BALLEN. Was there an advantage to small payments being made?

Mr. **Brown**. Certainly.

Mr. **Ballen**. What was that advantage?

Mr. **Brown**. The advantage was that he wouldn't appear to have a lot of wealth suddenly, and he never requested—he requested it in increments of $5,000.

Mr. **Ballen**. Your books and records would have been scrutinized too for some large transfer of funds, is that correct?

Mr. **Brown**. Absolutely.

Mr. **Ballen**. It would have been rather obvious?

Mr. **Brown**. Yes, sir.

Mr. **Ballen**. After you paid MacDonald the $5,000 in Oklahoma City—was it Oklahoma City?

Mr. **Brown**. Yes, sir.

Mr. **Ballen**. What golf tournament were you playing in?

Mr. **Brown**. We were playing in Dale Robertson's golf tournament.

Mr. **Ballen**. Did you subsequently meet Peter MacDonald in Las Vegas?

Mr. **Brown**. I did.

Mr. **Ballen**. Where did you stay?

Mr. **Brown**. At the Hilton Hotel.

Mr. **Ballen**. Did you pay for MacDonald's hotels and meals there?

Mr. **Brown**. I did.

Mr. **Ballen**. And for guests of his?

Mr. **Brown**. I did.

Mr. **Ballen**. I'd like to show you at this time a copy of your hotel receipt for the Hilton Hotel in Las Vegas, NV, and ask you if you can identify it, sir.

It reflects, does it not, that you paid for Peter MacDonald's rooms and expenses as well as your own?

[See pp. 371-374.]

Mr. **Brown**. It does.

Mr. **Ballen**. That's a copy of your receipt?

Mr. **Brown**. It is.

Mr. **Ballen**. What was the purpose of this trip to Las Vegas?

Mr. **Brown**. It was, I guess, a celebration. There were several people there—I don't recall who all.

Mr. **Ballen**. To celebrate what?

Mr. **Brown**. The closing of the Boquillas, and the transaction.

Mr. **Ballen**. Did you pay any cash to Peter MacDonald during this trip?

Mr. **Brown**. No, sir.

Mr. **Ballen**. Did you gamble?

Mr. **Brown**. I did.

Mr. **Ballen**. Did he?

Mr. **Brown**. I think he did.

Mr. **Ballen**. Did you give him any chips or cash to gamble with?

Mr. **Brown**. No, sir.

Mr. **Ballen**. Now, did anything occur with the BMW automobile that he—that you had transferred to him around this period of time?

Mr. **Brown**. He wanted to get rid of it.

Mr. **Ballen**. Why?

Mr. BROWN. I expect that it was too obvious.

Mr. BALLEN. That this came from you?

Mr. BROWN. Yes.

Mr. BALLEN. And Tracy?

Mr. BROWN. Yes.

Mr. BALLEN. Did you offer to take back the lease payments on the BMW?

Mr. BROWN. I did.

Mr. BALLEN. What occurred with the car, to the best of your knowledge?

Mr. BROWN. Rocky MacDonald said that he wanted it, and that he would take it over.

Mr. BALLEN. Mr. Brown, how many times after August, 1987, did Peter MacDonald ask for money from you?

Mr. BROWN. To the best of my recollection, approximately 7 to 10 times.

Mr. BALLEN. Did he ask for specific amounts?

Mr. BROWN. It was $5,000, usually, but we'd just settle that every time he needed money, we'd put $5,000 in an envelope, meet him wherever——

Mr. BALLEN. Did Peter MacDonald, Jr., act as an intermediary with some of these requests?

Mr. BROWN. He did.

Mr. BALLEN. Peter MacDonald, Jr., testified yesterday that he would call you and ask for golf balls, meaning cash, for his father. Did he do that?

Mr. BROWN. He did.

Mr. BALLEN. Did MacDonald talk to you about using a code for the transfer of money?

Mr. BROWN. He did.

Mr. BALLEN. When did he discuss that with you?

Mr. BROWN. Later in the year, after the investigations had started. He was afraid that his phone was being tapped, and he said, let's use the code word golf balls. When he needs money——

Mr. BALLEN. Did he—I'm sorry.

Mr. BROWN. Excuse me. And I think that was the time that we determined that he would receive increments of $5,000.

Mr. BALLEN. Did you discuss this use of the code in Phoenix, or in Scottsdale? Where did you discuss it?

Mr. BROWN. I believe it was at a golf game that he and I were playing in, in Scottsdale.

Mr. BALLEN. Was part of the plan that Peter MacDonald, Jr. would call you, or not? Or did he just subsequently call you?

Mr. BROWN. No; I was traveling a lot, and not available.

Or if I was out of town, Peter Jr. would call and say, "I want to meet with you, and my dad is requesting that we talk about some golf balls."

Mr. BALLEN. Now, Peter MacDonald Jr. testified yesterday that he relayed requests for golf balls for cash from his father to you approximately five times. How many times, to your recollection, did Peter MacDonald Jr. relay those requests?

Mr. BROWN. I don't know for sure. It might have been five times, but I recall, to the best of my recollection, making payments to Peter Jr. one or two times. There might have been more requests that could have been left on my answering service, or something. But I recall making those payments one or two times.

Mr. BALLEN. What would Peter MacDonald Jr. say? He testified yesterday that he would just ask for golf balls. Is that correct?

Mr. BROWN. That's correct.

Mr. BALLEN. How would you deliver the money to Peter MacDonald, Sr.?

Mr. BROWN. In cash, in an envelope.

Mr. BALLEN. Did he ever open the envelope?

Mr. BROWN. Not in my presence.

Mr. BALLEN. Now, is this his share in helping you sell the Big Boquillas ranch to the tribe?

Mr. BROWN. That's correct.

Mr. BALLEN. How much in total cash over the period of 1987 into 1988 did you pay Peter MacDonald?

Mr. BROWN. Exclusive of the $25,000, exclusive of the BMW, I estimate approximately $50,000.

Mr. BROWN. Now, you testified that these were in increments of $5,000, that that was what you had agreed upon.

Were the payments always in the amount of $5,000?

Mr. BROWN. There was one payment for $3,000. One day he came to town and called and I didn't have $5,000. It was on a week-end, and I couldn't get to the bank, and I had $3,000 cash, so I put it in an envelope.

Mr. BALLEN. Did he make any comment when you gave him that?

Mr. BROWN. No, sir.

Mr. BALLEN. Did he open it, and know that it was less than the usual payment?

Mr. BROWN. I told him.

Mr. BALLEN. He made no comment when you told him?

Mr. BROWN. No, sir.

Mr. BALLEN. Other than the time in Oklahoma City, do you recall any additional specific times and places that you paid off Peter MacDonald?

Mr. BROWN. I received a request for $2,500 at a birthday party for Mrs. MacDonald, and that was delivered to him in Scottsdale.

Mr. BALLEN. Whom did you give that $2,500 to?

Mr. BROWN. Peter MacDonald.

Mr. BALLEN. Who requested it?

Mr. BROWN. Peter MacDonald.

There was a $5,000 request made the day that he was in Phoenix on a talk show, KFY talk show, and I delivered that to him in an envelope.

Mr. BALLEN. Do you recall the date?

Mr. BROWN. I believe it was February of 1988.

Mr. BALLEN. How about—I'm sorry, go ahead, sir.

Mr. BROWN. February 26 or 27—I'm not sure.

Mr. BALLEN. How about before Christmas, 1987?

Mr. BROWN. There was a request made on December 17, 1987.

Mr. BALLEN. How is it that you remember that date?

Mr. BROWN. It was a—I think there's a check for that amount. It was right before Christmas, and he needed some shopping money.

[See p. 375.]

Mr. **Ballen**. Is that what he said to you?

Mr. **Brown**. Yes, sir.

Mr. **Ballen**. Mr. Brown, is that your check from 1987?

Mr. **Brown**. It is.

Mr. **Ballen**. Is that your signature?

Mr. **Brown**. It is.

Mr. **Ballen**. The check is made out in the amount of $7,500 to cash.

Mr. **Brown**. That's correct.

Mr. **Ballen**. Is that what you gave Peter MacDonald?

Mr. **Brown**. I needed some shopping money also.

Mr. **Ballen**. So how much did you give him?

Mr. **Brown**. I gave him $5,000. I kept $2,500.

Mr. **Ballen**. Now, every time you made a payment to Peter MacDonald, did he request it prior to the payment?

Mr. **Brown**. There was one time where he had made a request, and I was out of town. I didn't meet him for a couple weeks after that—it was just not feasible for us to meet one another. So I gave him that money prior to his requesting it—the first thing I did was hand him the envelope.

That was the only time I ever gave him money without his requesting it.

Mr. **Ballen**. Do you recall when that was?

Mr. **Brown**. Not explicitly, no, sir.

Mr. **Ballen**. Was it in 1987? Was it in 1988?

Mr. **Brown**. I can't recall.

Mr. **Ballen**. Sir, from the time the Big Boquillas Ranch closed until the present, how often would you see Peter MacDonald?

Mr. **Brown**. Maybe once a month, maybe once every 6 weeks, maybe twice a month.

Mr. **Ballen**. Did you pay him every time you saw him?

Mr. **Brown**. No, sir.

Mr. **Ballen**. How often would you pay him?

Mr. **Brown**. When he would request it.

Mr. **Ballen**. Mr. Brown, did Peter MacDonald ever ask you for a larger sum than $5,000 specifically?

Mr. **Brown**. He did.

Mr. **Ballen**. Directing your attention to January of this year, what did he ask for?

Mr. **Brown**. It was $50,000.

Mr. **Ballen**. Where was that?

Mr. **Brown**. At Durant's Restaurant in Phoenix.

Mr. **Ballen**. Do you recall when that was?

Mr. **Brown**. January 8, I believe.

Mr. **Ballen**. Did you ever offer to Peter MacDonald Sr. by check a larger sum than $5,000?

Mr. **Brown**. I did.

I asked him one time if he would like to have me just write him a check, and he said, "No, no, no."

Mr. **Ballen**. Why was that?

Mr. **Brown**. He didn't want it, and I didn't want—he didn't want the record to reflect it, and neither did I, but I did ask him.

Mr. **Ballen**. Do you recall when this was?

Mr. **Brown**. Not specifically.

Mr. **Ballen**. When you gave your money to Peter MacDonald in $5,000 increments, what denominations of bills would you pay him in?

Mr. **Brown**. Hundreds.

Mr. **Ballen**. Was there a reasons for that?

Mr. **Brown**. Not specifically, but it's the largest denomination and the least to put into an envelope.

Mr. **Ballen**. Now, the $50,000 that was this year—this January?

Mr. **Brown**. Yes, sir.

Mr. **Ballen**. Did he tell you the reason why he wanted the $50,000 from you?

Mr. **Brown**. Yes, sir.

Mr. **Ballen**. What was that reason?

Mr. **Brown**. He wanted to write a check back to me for the $25,000 that the phony note from Rocky MacDonald and the other $25,000 he needed to pay his lawyer.

Mr. **Ballen**. The $25,000—that was to make that note look legitimate?

Mr. **Brown**. That's correct.

Mr. **Ballen**. So he's asking you for the money to transfer back to you, in an attempt to make it look good?

Mr. **Brown**. That's correct.

Mr. **Ballen**. Part of the continuing cover-up plan?

Mr. **Brown**. That's correct.

Mr. **Ballen**. Now, I was asking about the denominations and the amounts of money. I believe that you testified that after the heat went on, and this transaction was being scrutinized, it would simply have been too obvious to transfer large sums—is that your understanding?

Mr. **Brown**. That's correct.

Mr. **Ballen**. Now, Mr. Brown, did you also make cash payments to Peter MacDonald, Jr.?

Mr. **Brown**. I did.

Mr. **Ballen**. How much?

Mr. **Brown**. My best estimate is somewhere from $5,000 to $10,000. I'm not sure

Mr. **Ballen**. When did you make those payments to Peter MacDonald Jr.?

Mr. **Brown**. In Scottsdale, when he would call. This was exclusive of the moneys that I furnished him when he would call for his father, saying that he needed some golf balls.

But he would call, and request funds.

Mr. **Ballen**. Now, Peter MacDonald Jr. testified yesterday that he requested this money from you during the period of August into the fall of 1987.

Is that your recollection, as to the timeframe?

Mr. **Brown**. I believe that's the timeframe, yes, sir.

Mr. **Ballen**. How did Peter MacDonald Jr. ask for the money from you? Did he ask for it in golf balls?

Mr. **Brown**. No, he asked for it in cash.

Mr. **Ballen**. Did he express it as a loan?

Mr. **Brown**. Yes.

Mr. **Ballen**. Or not?

Mr. BROWN. No; he expressed it as a loan. He said, "I need some money, and I'll sign a note to you for any amount, but I need some money." And quite frankly, I was glad to loan it to him, or give it to him.

I liked the young man, and I hate to see him hurt in any way.

Mr. BALLEN. He has been hurt, hasn't he?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Mr. Brown, did there come a time when you learned that a Federal grand jury subpoena had been issued to Tom Tracy in connection with an investigation of the Big Boquillas Ranch?

Mr. BROWN. Yes, sir.

Mr. BALLEN. When was that?

Mr. BROWN. I don't know the exact date, but I believe Mr. Tracy called me and told me that he had been subpoenaed by the Federal grand jury.

Mr. BALLEN. After Mr. Tracy gave you that phone call, did you receive a call from Peter MacDonald, Sr.?

Mr. BROWN. I believe that I did, yes, sir.

Mr. BALLEN. Did he call a meeting with you and Peter MacDonald, Jr.?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Where was that meeting held?

Mr. BROWN. In my office. In the conference room in my office.

Mr. BALLEN. Do you recall when that was?

Mr. BROWN. I don't know the exact date, but——

Mr. BALLEN. Could this be in 1987?

Mr. BROWN. I believe——

Mr. BALLEN. 1988?

Mr. BROWN. I believe it would be the latter part of 1987. I'm not sure. Excuse me.

I tried to find the exact date from our building manager and our conference records, but the best we can determine was late 1987 or early spring 1988.

Mr. BALLEN. Did Peter MacDonald Sr. tell you that he was calling this meeting because of the grand jury investigation?

Mr. BROWN. He did.

Mr. BALLEN. At the meeting, did you, Peter MacDonald Sr., and Peter MacDonald Jr. discuss a false story to explain the $25,000 wire transfer and the BMW automobile?

Mr. BROWN. We did.

Mr. BALLEN. Peter MacDonald Jr. testified yesterday that this discussion entailed the creation of false documents.

Is that true?

Mr. BROWN. That's correct.

Mr. BALLEN. Why was it necessary, Mr. Brown, to come up with a false cover story for the $25,000 and the BMW automobile? Did Peter MacDonald express a reason?

Mr. BROWN. Yes, sir.

Mr. BALLEN. What did he say?

Mr. BROWN. He didn't want it to show in the records that funds had been transferred directly to him, or that an automobile had been leased or purchased directly for him.

Mr. BALLEN. Peter MacDonald Jr. testified that his father told him to be the one requesting the $25,000, and the BMW.

Is that what happened at the meeting?

Mr. BROWN. Yes, sir.

Mr. BALLEN. What was the false cover story, Mr. Brown, that was devised?

Mr. BROWN. The cover story was that Peter MacDonald Sr. had borrowed $60,000 from the bank, and on the day that he borrowed it, he transferred $25,000 or $35,000 to Peter Jr. and that the note really should be to Peter Jr.

In fact, subsequent to the meeting, Peter Jr. presented a note to me in the amount of $25,000, and also a consulting contract, where I would agree to pay him $5,500 per month for various consulting work.

Mr. BALLEN. And that was false?

Mr. BROWN. That was false.

Mr. BALLEN. Is the actual existence of the $60,000 note true?

Mr. BROWN. I have never seen that note.

I did visit with a banker prior, and he confirmed that there was a note, but I've never seen it.

Mr. BALLEN. So that part of the cover-up was true?

Mr. BROWN. To the best of my knowledge

Mr. BALLEN. Mr. Brown, are these copies of the documents that Peter MacDonald, Jr. gave to you?

[See pp. 376–378.]

Mr. BROWN. They are.

Mr. BALLEN. He testified that he gave them to you in Scottsdale, AZ. Is that the best of your recollection?

Mr. BROWN. To the best of my recollection it is, yes, sir.

Mr. BALLEN. Was there any discussion when he handed the documents to you?

Mr. BROWN. There was some, but I didn't—frankly I didn't pay any attention to them. I didn't acknowledge them, I didn't sign them.

Mr. BALLEN. Why didn't you sign them?

Mr. BROWN. Because they were false, and I wasn't going to have anything to do with it.

Mr. BALLEN. Even though you had agreed to go ahead with it?

Mr. BROWN. Sir?

Mr. BALLEN. Even though you had agreed to go ahead with the false story?

Mr. BROWN. Well, at that point in time, but I wasn't going to carry it to that extent.

Mr. BALLEN. Did you tell them that?

Mr. BROWN. Yes.

Mr. BALLEN. When?

Mr. BROWN. After I had been subpoenaed by the U.S. Senate.

Mr. BALLEN. Was there ever another cover-up plan discussed with Peter MacDonald Sr. and Peter MacDonald Jr.?

Mr. BROWN. Yes; there was a plan wherein Peter Sr. would act in a consulting capacity for me in our aerial tramway business. That plan was approached and presented and kicked out on the table, but—although Peter Sr. is an electrical engineer, this is a mechanical piece of equipment. It wouldn't have held water, I don't think.

Mr. Ballen. Mr. Brown, did Peter Jr.—Peter Jr. testified yesterday that he discussed another plan with you, that would have gotten him out of the middle of this transaction—namely, that his father would have been a consultant on the sale of Reppel Steel. Did Peter, Jr. discuss that with you?

Mr. Brown. He might have but I have no recollection of it.

Mr. Ballen. Why was the story, then, on the aerial tramway rejected in favor of Peter MacDonald, Jr. taking the fall?

Mr. Brown. I think his father much preferred it that way.

Mr. Ballen. Do you know why? Did he say?

Mr. Brown. It removed him one step from any direct cash receipts or any kind of cash reimbursement.

Mr. Ballen. Mr. Brown, did you ever receive any payment on that note?

Mr. Brown. No, sir.

Mr. Ballen. Did Peter MacDonald Jr. ever give you any consulting services on that consulting agreement?

Mr. Brown. No, sir.

Mr. Ballen. How was the BMW automobile to fit into the cover-up?

Mr. Brown. To the best of my knowledge, the BMW was—I learned after Peter, Jr. moved to Scottsdale, or Phoenix, after he had passed the bar, that he was going to take over the payments on it.

I think Peter, Sr. wanted to get rid of it as best he could.

Mr. Ballen. Was the plan that Peter Jr. testified to yesterday, that the car was to be for Peter Jr. rather than Peter Sr. and that you would all state that?

Mr. Brown. Yes.

Mr. Ballen. Now, Mr. Brown, did you continue to meet with Peter MacDonald, Sr. and Peter MacDonald Jr. throughout 1988 to discuss the false cover-up story?

Mr. Brown. I did.

Mr. Ballen. Approximately how many times did you meet with them?

Mr. Brown. I don't know, but several.

Mr. Ballen. What was the general nature of those meetings?

Mr. Brown. Was this before or after I was wired?

Mr. Ballen. Both.

Mr. Brown. The general nature was that this is wrong, how do we answer this, the points that my counsel alluded to during his testimony.

Mr. Ballen. Now, were these later meetings occasioned by subpoena, another subpoena, in addition to the grand jury subpoena?

Mr. Brown. Yes, sir.

Mr. Ballen. Was that subpoena from the Senate of the United States?

Mr. Brown. Yes, sir.

Mr. Ballen. Did you tell Peter MacDonald Sr. about that subpoena from the Senate?

Mr. Brown. I did.

Mr. Ballen. Before you were to testify, as far as Peter MacDonald knew, he told you, did he not, to stick to the story and commit perjury before this committee?

Mr. Brown. He did.

Mr. Ballen. Did you specifically discuss your fear of perjury with Peter MacDonald Sr. and as Peter MacDonald Jr. testified to yesterday, with him as well?

Mr. Brown. Very definitely.

Mr. Ballen. How did they respond?

Mr. Brown. They tried to encourage me to stick with the line.

Mr. Ballen. During these meetings, sir, did Peter MacDonald Sr. repeatedly tell you in exact detail what lies to tell under oath?

Mr. Brown. He did.

Mr. Ballen. During your meetings, what, if anything, would Peter MacDonald Sr. do to avoid detection?

Mr. Brown. Would you state that question again, please?

Mr. Ballen. Well, how were these meetings conducted? Were they conducted in secret?

Mr. Brown. No.

Mr. Ballen. Were they conducted in cars? Were they conducted in code?

Mr. Brown. One night we had a meeting. They were to come to my hotel room at Sky Harbor Airport, but they refused to come up. Rocky called me on the phone and said, "We're not coming up. You come down and get into the car."

I was advised by the investigators not to go. There were surveillance vehicles. I did go. They got into the car, and I sat in the back seat, and Rocky MacDonald lost the investigators in about 5 minutes. There was no surveillance on me.

I did not know what to expect. I pleaded for a weapon before I was taken on the ride—I didn't know.

We drove for approximately 2 hours between Tucson and Flagstaff, avoiding all——

Mr. Ballen. Tucson and where?

Mr. Brown. I mean—yes. Tucson and Flagstaff, on the freeway, the interstate, going back and forth, avoiding any type of detection, surveillance at all.

I was out of contact with any of the investigators.

Mr. Ballen. What was the date of that meeting?

Mr. Brown. I'm not sure, but I'm sure the investigators have it. I don't have a diary on it.

Mr. Ballen. Would it be in December 1988?

Mr. Brown. Yes, sir.

Just to clarify my earlier statement, when they put me in the car, they drove at a high rate of speed. Rocky was driving toward Tucson, and he would drive, oh, 40 or 50 miles and then go under an underpass and do a U-turn, drive back on the freeway, back toward Flagstaff, and as we would pass the surveillance point, the investigators could hear the conversation. So they knew that I was still there. But I didn't know what to expect.

Mr. Ballen. Mr. Chairman, now would be an appropriate time to take a break and proceed with lunch.

Senator DeConcini. Mr. Brown, we will return at 2 p.m. I have some questions I want to follow-up, and I suspect Senator McCain does, and we'll also review the tapes and the other matters that you have cooperated with in this investigation

The committee will stand in recess until 2 p.m. this afternoon.

[Whereupon, at 11:55 a.m., the special committee was adjourned, to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION—2 P.M.

Senator **DeConcini**. The Special Committee on Investigations will come to order.

Mr. Brown, I remind you that you are under oath. We are going to proceed where we left off this morning with the questioning by Mr. Ballen.

Mr. **Ballen**. Thank you very much, Mr. Chairman.

Mr. Brown, there were a couple of questions left over from this morning that I wanted to go over with you.

You testified that your initial agreement with Tom Tracy was two-thirds of the profit to you, one-third to Mr. Tracy; is that correct?

Mr. **Brown**. That's correct.

Mr. **Ballen**. With one-third of that two-thirds of you going to Peter MacDonald?

Mr. **Brown**. That's correct.

Mr. **Ballen**. Did there come a point in time where Tracy asked you to take a lesser share, from 66⅔ down to 59 percent of the profits?

Mr. **Brown**. Yes, sir; that final negotiated figure was done in the attorney's office the morning of closing. Mr. Tracy stated to me that he had another buyer with the same amount of money and he didn't need to pay me that 66⅔ percent.

Mr. **Ballen**. Did you agree to lower your percentage take then?

Mr. **Brown**. I did.

Mr. **Ballen**. Did you discuss the fact with Peter MacDonald that your share and, by reference, his share, in effect, had decreased from 66.6 percent to 59 percent?

Mr. **Brown**. I did.

Mr. **Ballen**. When was that?

Mr. **Brown**. After the closing. It was approximately three or four days after the closing.

Mr. **Ballen**. What did Mr. MacDonald say?

Mr. **Brown**. No problem.

Mr. **Ballen**. Now, you also testified, I believe, that the profit to you gross, out of the Big Boquillas transaction, was $5 million?

Mr. **Brown**. Approximately. I don't have the figures with me, but approximately.

Mr. **Ballen**. The net profit to you was approximately $3 million?

Mr. **Brown**. Approximately.

Mr. **Ballen**. Mr. Brown, Peter MacDonald, Jr. testified yesterday that when he met with you and his father you were to go ahead with your false testimony; is that correct?

Mr. **Brown**. No, sir; I misunderstood your question there.

Mr. **Ballen**. Well listen to the question I just asked. When you met with Peter MacDonald, Sr. and Peter MacDonald, Jr. did the three of you go ahead with the plan that you were to commit perjury?

Mr. **Brown**. Yes, sir.

Mr. Ballen. Did you, at any point in time, tell them that you did not want to do that or that you were less than willing to go ahead with the false, cover-up story?

Mr. Brown. Excuse me just a moment, please.

I had told my attorney that I could not go ahead with it, but I did not tell Peter, Jr. or Peter, Sr. that I could not.

Mr. Ballen. Now, when Peter MacDonald, Jr. testified yesterday that the agreement between you, his father, and himself to go ahead with the cover-up story and commit perjury, that was the truth?

Mr. Brown. Please repeat the question.

Mr. Ballen. When Peter MacDonald, Jr. testified yesterday that he had agreed with you and his father, that the three of you had agreed to go ahead with the false, cover-up story, and that you would testify to such before this committee, was that the truth?

[No response.]

Mr. Ballen. Did you agree to go ahead with the false story?

Mr. Brown. Yes; I did.

Mr. Ballen. You never protested to them, did you?

Mr. Brown. No.

Mr. Ballen. Now, when you had those conversations with Peter MacDonald, Sr. and Peter MacDonald, Jr. in the latter part of 1988 did Peter MacDonald, Sr. and Peter MacDonald, Jr. know that you were cooperating with the United States Senate at that time?

Mr. Brown. To the best of my knowledge they did not.

Mr. Ballen. Did you tell them?

Mr. Brown. Absolutely not.

Mr. Ballen. Did they know during these later meetings on the cover-up you were equipped with a special transmitter that allowed the Senate and law enforcement authorities to tape your conversations?

Mr. Brown. Not to my knowledge.

Mr. Ballen. Did you meet Peter MacDonald, Sr. on November 22, 1988?

Mr. Brown. I did.

Mr. Ballen. Now, prior to that meeting with Peter MacDonald, Sr. did you meet with Mr. Wick Sollers and Agent Anthony Marceca of this committee, along with another law enforcement official?

Mr. Brown. I did.

Mr. Ballen. Did they fit you with recording devices?

Mr. Brown. They did.

Mr. Ballen. Did they remove those recording devices immediately after your meeting with Peter MacDonald, Sr.?

Mr. Brown. They did.

Mr. Ballen. Now, sir, as part of your arrangements for the meeting did Melvin McDonald, your attorney, prepare a letter allegedly to you that raised questions about the cover-up story?

Mr. Brown. He did.

Mr. Ballen. Did you show that letter to Peter MacDonald, Sr. during your meeting with him?

Mr. Brown. I did.

Mr. Ballen. Did he read from that letter in an attempt to provide you false answers to give under oath?

Mr. **Brown**. He did.

Mr. **Ballen**. Where did you meet Mr. MacDonald on November 22, 1988?

Mr. **Brown**. I picked him up at Cutter Aviation in Phoenix, AZ.

Mr. **Ballen**. Did he fly in?

Mr. **Brown**. Yes, he did.

Mr. **Ballen**. Do you recall the time of the meeting, sir?

Mr. **Brown**. I beg your pardon?

Mr. **Ballen**. Do you recall what time the meeting occurred?

Mr. **Brown**. As I recall, it was around 5:30, 6, 6:30 that he arrived.

Mr. **Ballen**. Did you pick him up in your car?

Mr. **Brown**. I did.

Mr. **Ballen**. Where did you go?

Mr. **Brown**. We went to their townhouse in Phoenix.

Mr. **Ballen**. Did you have a conversation with him there?

Mr. **Brown**. I did.

Mr. **Ballen**. Did you subsequently go to a restaurant with him?

Mr. **Brown**. I did.

Mr. **Ballen**. Mr. Chairman, at this time I would like the permission of the Chair to play excerpts from the tape-recorded conversations between Mr. Brown and Mr. Peter MacDonald, Sr.

Senator **DeConcini**. You may proceed, counsel.

Mr. **Ballen**. Thank you. The committee has retained Mr. Paul Ginsberg, of Professional Audio Laboratories, as an expert assist us in playing the tapes. Mr. Ginsberg is seated here on the dais. With the Chair's permission I would move that we begin the playing of the tape.

We will now play portions of the November 22, 1988, tape.

Mr. Brown, when we start the tape we are going to stop it and ask you to identify whose voices are whose.

[Identification of voices from tape recording will be in brackets.]

[Mr. **McDonald**, Sr.] So the circumstances is Peter McDonald, Jr.——

Mr. **Ballen**. Whose voice is that, sir?

Mr. **Brown**. That's the voice of Chairman Peter MacDonald.

Mr. **Ballen**. Start the tape at the beginning, please, Mr. Ginsberg.

[Mr. **MacDonald**, Sr.] So the circumstance is Peter MacDonald, Jr. requested the money that he has from you for, for consulting services, because of consulting work. Did he personally ask you for the funds? Yes, I guess he did. This is not, I don't know who he is talking about. Me?

[Mr. **Brown**.] Yeah.

[Mr. **MacDonald**, Sr.] But, no, it's Rocky MacDonald. That you and Rocky work out this arrangement where he does consulting work for you or will do consulting work or whatever. Did he tell you what they were for? Again me, no. It's Rocky that did. Did they have any relationship with Big Boquillas? No, absolutely not. Rocky had nothing to do with Big Boquillas. Was it a loan or a gift? I would say, in this instance, it was a loan against his contract that he's going to do for you.

[Mr. **Brown**.] Hm hm

[Mr. MacDonald, Sr.] It's not a gift. Who provided you the account number? Rocky did, obviously. It is virtually certain that Senate investigators will spend—so the answer here is that it's Peter MacDonald, Jr.'s transaction with you.

[Mr. Brown.] Let me borrow your pen. I may make some notes on it. I don't have a pen.

[Mr. MacDonald, Sr.] [portion inaudible] It's Peter MacDonald, Jr.'s transaction with you, and nothing from me.

[Mr. Brown.] Of course. See, I don't know what Tracy or James might have told them, but Tracy wire transferred the——

[Mr. MacDonald, Sr.] What James said, what they said, is, you know, it's really your word and Rocky's word against their word.

[Mr. Brown.] Hm hm.

[Mr. MacDonald, Sr.] If he's saying something and they're saying something, it's—and I'm saying something, so it's, it's Rocky that asked you for this $25,000 to, because I'm bugging him because we need to pay that note. Did he personally ask you for the loan—for the funds? No, not MacDonald, Sr., but Jr. did. Did he tell you what they were for? Rocky did, I'm sure, what he wanted to do with it. Did they have any relationship with Big Boquillas? No, because Rocky had nothing to do with Big Boquillas.

[Mr. Brown.] Right, right.

[Mr. MacDonald, Sr.] Was it a loan or a gift? It's a loan against the work that he's going to do for you. Who provided you with the account number? Rocky did. Rocky gave you the account number because he knows the account and, because uh, uh like I know his account number, he knows mine. So that's, that's what that's going to be.

[See pp. 379, 380.]

Mr. Ballen. Mr. Brown, when Mr. MacDonald is referring to Rocky, who is he referring to?

Mr. Brown. His son, Peter MacDonald, Jr.

Mr. Ballen. And Peter MacDonald here is giving you explanations as to the cover-up story that you should testify to?

Mr. Brown. That's correct.

Mr. Ballen. These explanations were false?

Mr. Brown. That's correct.

Mr. Ballen. Now, he's reading questions out loud. Are these questions from the letter of your lawyer, Melvin McDonald, that you handed to him?

Mr. Brown. They are.

Mr. Ballen. Peter MacDonald is giving you the false answers to provide?

Mr. Brown. That's correct.

Mr. Ballen. Please proceed, Mr. Ginsberg.

[Mr. McDonald.] Then probably the next question they're going to ask you if you did, when you were doing this did you talk to Sr. because it's Sr.'s account. And did you say anything about you checked into his account and that Jr. wants to do this.

[Mr. Brown.] Hm hm.

[Mr. MacDonald, Sr.] Now, the answer there would be either yes or no. And probably the appropriate answer would be maybe yes. Yes, I, I checked it out and the chairman indicated that, yes, that his son did owe him some money and that was so—he was legitimate. That, that would be the answer I would strike. Because under ordinary circumstances going through this, it's what you would do. Right? You would say, unless Rocky says, you know, just, I don't want my father to know it. Then you just went ahead and did that.

[Mr. **Brown**.] Hm hm.

[Mr. **MacDonald**, Sr.] To your knowledge, did he really execute the note that day? Did he give it to you that day? If I was asked that question, I don't know whether he actually signed it that day, but he gave it to me sometime after that. What's wrong with that? He signed it. It could be a week or 2 or 3 weeks later that he give you this, but in the process up here it was verbally discussed that he was going to do work for you in this amount, by loaning him this advance to his—the work that he's going to do for you. And I don't know whether he signed it on that day or a day later, all I know is I received it sometime after that. Isn't that a good answer?

[Mr. **Brown**.] Yeah, yeah, that's——

[Mr. **MacDonald**, Sr.] You know, that's the answer. I don't know whether he signed it that day or not. All I know is he gave it to me. I don't remember him giving it, I don't remember him giving it to me on that day, but all I know is he gave it to me sometime later. I don't know whether it was January or February that he gave me the note. So I think that's——

[Mr. **Brown**.] Okay.

[Mr. **MacDonald**, Sr.] [continuing]. That's the answer. Uh, "C": if the note was executed in January 1987, but you did not receive it then, when did you receive it? I don't know when I received, but I know I received it sometime early, sometime right in there. Maybe it was February. I don't remember. I received it sometime after that. Why was the note executed more than a month prior to the wire transfer? Because obviously——

[Mr. **Brown**.] See, those are questions that I just—I don't know the answers to.

[Mr. **MacDonald**, Sr.] Whatever, this, this is, it's got to be, because it's going to come back to Rocky again.

[Mr. **Brown**.] Hm hm.

[Mr. **MacDonald**, Sr.] And Rocky has to give the same answer. So that's why if you, if you kind of remember writing it down—obviously, if the note was executed in January and you did not receive it then, when did you receive it? I don't know. I think sometime early. I know sometime early in 1987, maybe late in January or maybe February. I don't know. I think, if you try to be specific then, you know, that's not good. But it's reasonable for me to receive—Like, if you give me a letter of some sort, I don't remember unless I wrote it down somewhere, and I don't do that all the time. And that's legitimate. Why was the note executed more than a month prior to the wire transfer? I assume that the wire transfer was done in February 1987.

[Mr. **Brown**.] I think so, but I'm not sure either.

[Mr. **MacDonald**, Sr.] That's what he's saying, why, so he's saying that this January note was executed more than a month prior to the wire transfer. And, because you and he discussed this early on, back in December, and I asked him to give me a—if that's what he wants to do I'm willing to help him out, and he promised me he's going to make out a promissory note and a consulting contract that would, that would allow for this. So that's when he, when he made it out and I received it. Of course, if this promissory note that he made—I don't know whether that's right. When was the wire transfer made?

[Mr. BROWN.] I think in February.

[Mr. MACDONALD, Sr.] You think so, huh?

[Mr. BROWN.] I think so.

[Mr. MACDONALD, Sr.] If it is, then just say we discussed this way back in December, you and he, and I asked him to give me a note. And he gave it to me in—sometime in January or—I really didn't receive it until sometime toward the end of February, I think. I mean toward the end of January or somewhere in February. All I know is that when I saw the date it was later than when it was written. I really don't know exactly what date it was. But, see, that would make it—like, if I am over here, signed and typed a promissory note here, and I wanted to get a loan from you, then I date it, I sign it, and then somehow I carry it around and forgot to give it to you and maybe next week I give it to you.

[Mr. BROWN.] Hm hm.

[Mr. MACDONALD, Sr.] Well, then from there, once you get the note, then it's going to take you some time to make an arrangement to make a wire transfer. So from the date I signed, typed this thing up, whatever I did, and give it to you, then, you know, you got my signature. Then it's going to take you some time to make the arrangements, so obviously from the time he made the note until the time you get the wire transfer in, there's some lapse of time. You don't know what that time is. And if it's a month, it's a month. But you didn't get it a month, exactly on the 14th. Cause you know that, because when you saw it, it was much later. You don't know whether it was late January or early February. You don't know. All I know is when I got it, it was late. And, second to that, I did not, as soon as I got the note I did not go make the wire transfer. I had to get some other information too before I made the transfer. So obviously that's the reason for the delay on the date he signed it and supposedly typed it out and the time he gave it to me to the time I finally got around to making these transfers. There was a lapse of time. So I think that's a legitimate explanation, don't you think?

[Mr. BROWN.] And, of course, I don't know what Tracy has said. I don't know what James has said, because they're the ones that made the wire transfer.

[Mr. MACDONALD, Sr.] See, Tracy and James don't know your relationship with Rocky.

[Mr. BROWN.] Hm hm.

[Mr. MACDONALD, Sr.] They don't know the note exists.

[Mr. BROWN.] Yeah.

[Mr. MACDONALD, Sr.] All they know is what you said to them verbally at the time, and you have the, you have the document. You have the whatever it is that backs you up. All they know is that you told them you wanted money transferred to my account. Right?

[Mr. BROWN.] Right, right.

[Mr. MACDONALD, Sr.] That's all they know.

[Mr. BROWN.] Right.

[Mr. MACDONALD, Sr.] What you're saying is that the background of this, yes, that's probably what they say, if they're going to talk. I think that he's not going to talk. That's what I'm told. That's what Rich was saying.

[Mr. BROWN.] You mean Tracy?

[Mr. MACDONALD, Sr.] Tracy's not going to talk.

And, because of that, if the guys, if the people don't talk, all of these conflicting stories become a major evidence against the prosecutors—against the investigators. Because now they have to make a decision. Now this is, these people are saying a lot of these are rumors, you know, suspicion. All kinds of things going on. And that's what they got. Now, in order to get the confirmation or denial they got to talk to the people that are really involved. And if they can't get that, then they, they're stuck. If all they have is hearsay, and I think so, and I say somebody with this, and so and so and so and so, and it looked, what they have looked like what it appears to be, but there's no hard evidence and, until they get down as close to [portion inaudible] to this person here. So I don't know. I think that if Tracy says—Obviously Tracy doesn't know what you and Rocky are talking about back in December and January.

[Mr. BROWN.] Hm hm.

[Mr. MACDONALD, Sr.] And even February. All Tracy knows is that you asked him to make this wire transfer to this account—MacDonald, Sr. account. That's all he knows, and that's verified by the fact that it happened. But why it happened, how it happened, is you and Rocky's story. And it has nothing to do with Big Boquillas. It has everything to do with Rocky's need to pay his portion of the loan and obligation. How would Jr. know that you were going to loan—let's see. What did you know about any obligation that Peter, Jr. might have on the note? Well, I guess he just told you that he has a note due over there that he shared with his father and he wants, he wants to, he promised to pay his father back and it didn't materialize so he needs to do this. How would Peter, Jr. know that you were going to loan it to him or his dad? Well, he didn't. He just talked to you back in December, saying that he would like to, that you advance as a loan to him an amount of money that, this amount of money so that he could work for you in any manner that would suit his expertise. You did that because you know him and you know his father and you aren't doing this as any kind of favor or gift or anything like that.

Mr. BALLEN. Mr. Brown, throughout this conversation again Peter MacDonald is reading these questions from your lawyer's letter?

Mr. BROWN. Yes, sir.

Mr. BALLEN. And giving you answers to testify to?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Proceed, Mr. Ginsberg.

[Mr. MACDONALD, Sr.] Have there been any discussions with Peter, Sr. about paying the note? No. He don't discuss his note with me nor does Jr. discuss his notes with you with me. He is a man. He does his own thing. And I do my own thing. So have there been any discussion with Peter, Sr. about paying the note? It's not my note. Why should you talk to me about it? Right.

[Mr. BROWN.] Hm hm.

[Mr. MACDONALD, Sr.] In other words, the real root basis here is that you and Rocky had a conversation back in December 1986 and January 1987, wherein he needs to pay his portion of a note and that he has—and the way he wants to do that was make it as a loan against his future, his future work in the consulting contract that he wanted to execute. And he wanted to work and he's going to work it off and definitely you at that time, you wanted to go out and do some other things with Indian tribes. Be it oil and gas or cattle or whatever it is. And obviously concentrating on Big Bo and they asked did he help you out on Big Bio. No. I didn't want him involved because his father was there and since Chairman MacDonald is a friend of mine, I've known him for a long time, I was trying to keep him out of that, because I knew that it's not right for me to be involving Jr. or even Sr. in this matter [portion inaudible] work directly with the departments and the divisions who are responsible for it. So I think the answer to why hasn't he made payment on it is probably, No. 1, he doesn't have any money to make payment on it; and, No. 2, your and his understanding is that he's going to work for you. If he doesn't work for you when he makes his money he's going to pay it back. And, therefore, yes, make the demand and he hasn't made a payment or he hasn't—has he wrote you a letter? Rock?

[Mr. BROWN.] No; I haven't heard a word from him.

[Mr. MACDONALD, Sr.] So maybe I should have Rock write you a letter and say I received your demand note. I told him that a long time ago that, answer back—answer to his letter and say I received your demand note. Here's my situation. I'm short on money and this and that. As we have talked about, apparently back when I made the note, I want to work for you and work it out on a, on a what do you call it?

[Mr. BROWN.] Consulting.

[Mr. MACDONALD, Sr.] Yes; on a consulting arrangement. If you don't feel this is appropriate, please let me know and I'll do what I can to see if I can make even maybe interest payment or something. I told him to do that. So that would kind of show that your previous conversation with him was that this is a loan against the work that he's going to do. And that's where this consulting contract comes in. [Portion inaudible.] Then, "E": what is Peter, Sr.'s role, if any, in the execution or delivery of the note to you? Nothing. I'm not aware of it. I don't know anything about it. Right? What is Peter, Sr.'s role, if any, in the execution and/or delivery of the note to you? Nothing. So I think that that's a good scenario on that.

Mr. BALLEN. Mr. Brown, two questions. Your lawyer had written a demand note on this loan at one point in time on the early stages of this?

Mr. BROWN. He did.

Mr. BALLEN. And, sir, again, in these questions he is reading from, Peter MacDonald's giving you the false story? The cover-up he wants you to testify to?

Mr. BROWN. He was.

Mr. **Ballen**. Mr. Ginsberg, could you please proceed?

[Mr. **MacDonald**, Sr.] Was the consulting agreement drafted at the same time as the promissory note? I would say yes.

[Mr. **Brown**.] Hm hm.

[Mr. **MacDonald**, Sr.] To the best of your knowledge, you received both the note and the consulting agreement about the same time?

[Mr. **Brown**.] Hm hm.

[Mr. **MacDonald**, Sr.] Was the consulting agreement created as a device for repayment on the promissory note? If the answer is yes, why was the promissory note dated almost 1 year prior to the consulting agreement?

[Mr. **MacDonald**, Sr.] If the—so if this is the case the answer to number one, "A", is I don't know. You know, you get a promissory note first and then later on you get the—you don't know how far late it is, but you know you get the consulting agreement much later on. And that answers this question. Why? I don't know, because Rocky was the one generating these things. Right? Rocky generated the note. He's the one that gave you the note. Rocky is the one that finalized the consulting agreement. I don't know why there's a difference between this. But from the beginning, no matter what has happened here, the understanding that you have with him was that he wants to borrow in the way of advance the work that he's going to do for you and to pay his note off that he has at the bank with his father. And you ask him to give you—you ask him to give you a note, and also a consulting contract. The note [portion inaudible] sometime later a consulting contract came in. And, obviously, since you and he are friends you're not putting the screws. You're busy with Big Bo and he's busy with something else. You know, I think that's all you can say to these guys.

[Mr. **Brown**.] Yes.

[Mr. **MacDonald**, Sr.] It had nothing to do with his father, and his father had no part in this transaction, and Rocky had no part in Big Bo.

Mr. **Ballen**. Did you also discuss during this same conversation with Peter MacDonald how the BMW would fit into the cover-up scheme?

Mr. **Brown**. I think we did. Yes, sir.

Mr. **Ballen**. You think you did? Or did you?

Mr. **Brown**. I know we did.

Mr. **Ballen**. Proceed, Mr. Ginsberg.

[Mr. **MacDonald**, Sr.] It's you and Rocky's transaction. Part of this $25,000 deal where you're going to make this consulting agreement with you and Rocky where he could, he promised on your part that you would retain him for $5,000 a month or so. And, with that then, he wanted the car, since he doesn't have a vehicle. He flies in and out and when he's here he wanted to have a car. And so that's what you did, whatever you did, make the down-payment, get the lease made out. And I think you used my address, didn't you?

[Mr. **Brown**.] Yes; your Flagstaff address.

[Mr. **MacDonald**, Sr.] Just used his father's address because obviously he didn't have enough, what do you call it?

[Mr. **Brown**.] Credit.

[Mr. MacDonald, Sr.] Credit to do this, so he used his father's, actually the amount of the down-payment I made and the payments I made are for him—for Rocky. You have your own note and he certainly has the understanding that it's all going to come out of his consulting contracts when he starts working. [Portion inaudible] uses his father's credit, because he didn't have one. And the way—the amount of money you paid and the two or three payments you made were to—all count against his consulting contract. So now he owes you the 25,000 plus whatever amount of payment you made on his BMW—Rocky's BMW. See he's making his own payments now. Right?

[Mr. Brown.] Hm hm.

[Mr. MacDonald, Sr.] So that would be the case. Did Peter, Sr. ask you to make those payments? Jr. did. Right?

[Mr. Brown.] Hm hm.

[Mr. MacDonald, Sr.] And the reason that he asked you to make those payments, he's falling short. Therefore—but all that stuff was an understanding was that those will be charged against his consulting contract. Why did the payments stop? Well, it was never your intention to make payments.

[Mr. Brown.] Right.

[Mr. MacDonald, Sr.] It was your intention to help him get it and then he would make payments. And obviously the couple of times that he couldn't make payments I helped him out. But all that is charged against his consulting contract. So why did [portion inaudible] did the consulting agreement have any relationship to these BMW payments? Yes, they did. They were part of the understanding you had. And finally I think they will heavily pursue the school tuition question. Has Tracy paid Peter's daughters' tuition in Massachusetts? No.

[Mr. Brown.] I don't know anything about——

[Mr. MacDonald, Sr.] You don't know, because you don't know what Tracy is doing.

[Mr. Brown.] No.

[Mr. MacDonald, Sr.] If they ask you that question, you don't know. You have no idea. Why do Tracy's records show payment for the girls' tuition? I don't know. Has he——

[Mr. Brown.] No, I don't.

[Mr. MacDonald, Sr.] You got to answer these questions that way. And fill your mind and your spirit that the bottom line is that all this other stuff—the bottom line is that you have an agreement with Rocky on a consulting basis. You lent him the money. And how this paperwork [portion inaudible], obviously that's no control of you or his. One follows the other, so many months later, whatever it is, obviously that's a problem to them, but to you [portion inaudible] after you made that understanding that when you started working on this Big Bo it was seven days a week, 24 hours a day thing for you.

[Mr. Brown.] That's right.

[Mr. MacDonald, Sr.] You worked your ass off and you didn't, you didn't have time to do any other thing or have Rocky do any other thing and he was doing the work. And besides, his father was the chairman and I don't want to get him involved and get his father in trouble, either. Even for that reason, I refrained from even discussing in any details whatsoever about what I'm doing with the tribe, with the chairman.

[See pp. 381-392.]

Mr. BALLEN. Mr. Brown, on December 14, 1988, did you have a telephone conversation with Peter MacDonald, Jr.?

Mr. BROWN. I did.

Mr. BALLEN. Did this call occur after you had already allegedly testified once before the Senate as to the cover up?

Mr. BROWN. It did.

Mr. BALLEN. The following is the phone call. Proceed, Mr. Ginsberg.

[Mr. MACDONALD, Jr.] [Inaudible.]

[Mr. BROWN.] Oh, okay. I just got home.

[Mr. MACDONALD, Jr.] Yeah. [Portion inaudible.]

[Mr. BROWN.] I didn't get home till late last night. That's why I didn't return your call.

[Mr. MACDONALD, Jr.] That's okay. No, I figured you'd be pooped. I just didn't know how long it was going on.

[Mr. BROWN.] We went for about 6 hours.

Mr. BALLEN. Is this your voice in the conversation?

Mr. BROWN. It is.

Mr. BALLEN. Who is the other voice?

Mr. BROWN. Peter MacDonald, Jr.—Rocky.

Mr. BALLEN. Proceed.

[Mr. BROWN.] We went for about 6 hours, and then——

[Mr. MACDONALD, Jr.] How did it go?

[Mr. BROWN.] Well, not too, too good. They're really bearing in.

[Mr. MACDONALD, Jr.] Uh huh.

[Mr. BROWN.] Ken Ballen, Wick Sollers both were here; they each asked questions. It was really tense.

[Mr. MACDONALD, Jr.] Hm hm.

[Mr. BROWN.] And then my attorney had to leave for awhile. He had a court appointment downtown on another matter. And then the attorneys had a disagreement over it. Of course, the main focus is on the $25,000 note and the BMW.

[Mr. MACDONALD, Jr.] Sure, sure.

[Mr. BROWN.] And I stuck to the line——

[Mr. MACDONALD, Jr.] Good.

[Mr. BROWN] [continuing]. That we discussed in the car.

[Mr. MACDONALD, Jr.] That's great.

[Mr. BROWN.] I'm just afraid that I'm facing a multiple, multiple amount of perjury charges. I'm sticking to the line, though.

[Mr. MACDONALD, Jr.] Well, that's exactly what we're doing.

[Mr. BROWN.] Well, you're going to stay with me on it, huh?

[Mr. MACDONALD, Jr.] I'm staying right here. We're all three of us Three Musketeers shoulder to shoulder.

[Mr. BROWN.] Well, we got to.

[Mr. MACDONALD, Jr.] You bet you.

[Mr. BROWN.] Cause the only thing I'm worried about is the perjury.

[Mr. MACDONALD, Jr.] Well——

[Mr. BROWN.] The Big Bo can stand on its own. But a perjury charge is something else.

[Mr. MacDonald, Jr.] Well, I think there's a way around that. There's got to be. Everybody else gets around it. As far as I'm concerned they've got that [portion inaudible.]

[Mr. Brown.] Well, course that's an unknown. We don't know who all they've talked to.

[Mr. McDonald, Jr.] Yeah, but everything else is circumstantial. They don't have any hard evidence. I mean there's only three people knew what the real story was. And that's you, me and dad. That's it. I don't care what anybody else says. [Inaudible.] There's nobody involved but us three.

[Mr. Brown.] Yeah, but even my own attorney doesn't believe me.

[Mr. MacDonald, Jr.] Well.

[Mr. Brown.] And the Senate guys don't either. But my concern is are you strong enough and is your dad strong enough to stand up to this without—usually what happens, somebody cracks.

[Mr. MacDonald, Jr.] Oh, I understand. That's what they're hoping. That's their whole game. Like I said, they're going to try and scream and intimidate you and laugh and whatever and hope somewhere down the line that you break, I break, and otherwise they've got nothing. They can hee haw all they want. They can make whatever innuendos they want to.

[Mr. Brown.] Well, I guess——

[Mr. MacDonald, Jr.] See what I'm saying?

[Mr. Brown.] Yeah.

[Mr. MacDonald, Jr.] You know, that's—and that's all they've got right now. And if they come up with something else it's still circumstantial. There's no hard facts.

[Mr. Brown.] Do you see any possible way that they could take anybody's deposition that would blow a hole in our story?

[Mr. MacDonald, Jr.] Well, taking all the players here, everybody is an outsider. Nobody really knew that, or could have known, or even needed to be told [portion inaudible.]

[Mr. Brown.] Yeah, that's true.

[Mr. MacDonald, Jr.] You see what I'm saying?

[Mr. Brown.] Yeah.

[Mr. MacDonald, Jr.] It's nothing that we would have ever said to anybody. And as far as the arrangements for the wire transfer, there was no reason to tell anybody else who, for or why it was going, or whatever, other than the three of us. See what I'm saying?

[Mr. Brown.] Okay. Of course Tom Tracy, he knew about the wire transfer.

[Mr. MacDonald, Jr.] Oh, yeah, but he was only the person to send it. You know what I'm saying? He doesn't know the circumstances of why there was a loan, why—and even if there was, there was no reason to tell him.

[Mr. Brown.] But you got to remember this, that Tracy and James—James found the BMW, and Tracy arranged the financing at the bank. What the hell are they going to tell them? Are they going to tell them that they're getting it for Peter, Jr.?

[Mr. MacDonald, Jr.] They don't know that they weren't. You see what I'm saying?

[Mr. Brown.] You and I know, you and I know different.

[Mr. MACDONALD, Jr.] Yeah.

[Mr. BROWN.] They're probably, they're probably——

[Mr. MACDONALD, Jr.] But, see, even if they say that, you know, the fact that it appears that way, because——

[Mr. BROWN.] Have you ever met—yes, you've met Tracy. Have you ever met James?

[Mr. MACDONALD, Jr.] No; I haven't.

[Mr. BROWN.] You've met Tracy, haven't you?

[Mr. MACDONALD, Jr.] Yes.

[Mr. BROWN.] Okay. Talk to you later, then.

[Mr. MACDONALD, Jr.] All right, buddy. Just hang in there now.

[Mr. BROWN.] I'm trying, but I'm not.

[Mr. MACDONALD, Jr.] Take deep breaths.

[Mr. BROWN.] Hell, I can't breathe and I can't sleep. I can't do anything. I'm about ready to get in an airplane and go up to 30,000 feet and cut the pressurization off.

[Mr. MACDONALD, Jr.] Just hang in there, buddy.

[Mr. BROWN.] All right.

[Mr. MACDONALD, Jr.] It'll work itself out. I promise you.

[Mr. BROWN.] I'll see you later.

[Mr. MACDONALD, Jr.] All right, buddy, hang tough.

[Mr. BROWN.] All right.

[Mr. MACDONALD, Jr.] Bye.

[Mr. BROWN.] Bye.

Senator DECONCINI. The committee is going to recess for approximately 15 minutes. There is a roll call vote that has just started, and Senator McCain and I will be returning shortly.

[Recess.]

Senator DECONCINI. The special committee will come to order.

Mr. Brown, I would remind you that you are still under oath.

Mr. Ballen, please proceed.

Mr. BALLEN. Mr. Brown, we have just finished playing a December 14, 1988, telephone conversation between you and Peter MacDonald, Jr.; is that correct?

Mr. BROWN. That's correct.

Mr. BALLEN. As Mr. MacDonald testified yesterday and this conversation shows today, this was a conversation between you and him urging you to go ahead with the cover-up plan; is that correct, sir?

Mr. BROWN. That's correct.

Mr. BALLEN. Now, Mr. Brown, on January 5, 1989, did you meet with Peter MacDonald again to discuss the cover-up?

Mr. BROWN. I did.

Mr. BALLEN. Where was that? Where did that meeting take place?

Mr. BROWN. Excuse me just a moment, please.

Mr. BALLEN. Was it at a restaurant, Mr. Brown?

Mr. BROWN. Yes, sir; this meeting occurred at Durant's Restaurant in Phoenix, AZ.

Mr. BALLEN. You and Mr. MacDonald again met and again discussed the cover-up?

Mr. BROWN. Yes, sir.

Mr. BALLEN. I direct your attention to the transcript tape of January 5, 1989, conversation between Bud Brown and Peter MacDonald, Sr.

Mr. Ginsberg, would you please proceed.

[Mr. BROWN.] Okay, when the money was wire transferred, when——

Mr. BALLEN. Is that your voice, Mr. Brown?

Mr. BROWN. It is.

Mr. BALLEN. Proceed, Mr. Ginsberg.

[Mr. BROWN.] When the money was wire transferred, when the 25,000 was wire transferred, that was in February or something, the note was dated January. But the fact that you and I and Rocky are the only three that know that, that's bullshit. Okay?

[Mr. MACDONALD, Sr.] Yes.

[Mr. BROWN.] So what do we—who, who else could blow a hole in that story?

[Mr. MACDONALD, Sr.] The only other person that would be, the guy that made the transfer. That's Tracy. Like, you know, in your letter, that what's his name wrote, Mel McDonald. What is Tracy saying? And he said something about Tramway, or something like that.

[Mr. BROWN.] Yes; there was a, there was a consulting agreement that Rocky had or you had with me on the Aerial Tramway.

[Mr. MACDONALD, Sr.] I think it was me, or something like that.

[Mr. BROWN.] Which was also bullshit.

[Mr. MACDONALD, Sr.] Right. Now so that's the only—there, again, the question may be why, why is Tracy doing this? Well, I have no, no control over that. It's just between you and Tracy. Tracy owes you some money, as I understand it.

[Mr. BROWN.] That's right. And I think Tracy might be trying to set old Brown up, too. I don't know who in the hell is for me or against me.

[Mr. MACDONALD, Sr.] Well, you can bet you your bottom dollar that I'm with you and Rocky's with you.

Mr. BALLEN. Mr. Brown, again did Peter MacDonald assure you that he was with you on the perjury?

Mr. BROWN. That's correct.

Mr. BALLEN. Proceed, Mr. Ginsberg.

[Mr. BROWN.] Well, just as long as we're all telling the same story.

[Mr. MACDONALD, Sr.] Yes; well, don't let the separation or lack of communication give you a concern that there is something going on. That's the last thing that I would do and I'm sure that that's the last thing that Rocky would do.

[Mr. BROWN.] Well, the thing that I'm the most fearful of is that I have—I have told the story under oath. And I'm the only one who's told it. You know, you guys have got to tell the same story.

[Mr. MACDONALD, Sr.] Right.

[Mr. BROWN.] And if there is any deviation from that, then somebody's ass is gonna get hung.

[Mr. MACDONALD, Sr.] Right.

[Mr. BROWN.] That's—I have no intention——

[Mr. MACDONALD, Sr.] I don't think that anybody's ass is to be hung at all. If anybody's ass they're trying to hang, it's me. Because if they, if they get over the, if they get over the Big Boquillas bullshit and the BMW and any other things like that, I'm sure they have got 10 or 15 more other stuff that has nothing to do with you, but may have something to do with Larry Ward, or has something to do with all these other people that, that I work with.

[Mr. BROWN.] Yes; your $750,000 office made the newspapers.

[Mr. MACDONALD, Sr.] That's right. And my friend supposed to have been the contractor to do that, right? And that kind of stuff. So I mean that, I, I feel that, you know, that I'm the, I'm the No. 1 target. And that's the sad truth. Face it that way. That I get rid of this, which is you and Tracy, whatever it is on this Big Bo, then I'll probably have five or six other things that I, I still have to surmount.

Mr. BALLEN. Mr. Brown, do you know what he meant by "the other things he had to surmount"?

Mr. BROWN. He had other contractors.

Mr. BALLEN. Did he tell you about the other contractors?

Mr. BROWN. No; he did not. But he intimated that he had more people to account to or for.

Mr. BALLEN. Did he mention the names to you of John Paddock, Pat Chee Miller, and other names?

Mr. BROWN. Yes; he did.

Mr. BALLEN. Did you proceed to ask him whether those people had been subpoenaed by the Senate?

Mr. BROWN. Yes.

Mr. BALLEN. Now, just for the record, Mr. Brown, did this January 5 conversation take place in a car with Peter MacDonald after you met him at the airport? And then on January 7 did you meet him at Durant's Restaurant?

Mr. BROWN. Yes; I apologize for that. This was in an automobile.

Mr. BALLEN. Please proceed, Mr. Ginsberg.

[Mr. BROWN.] Have they been subpoenaed?

[Mr. MACDONALD, Sr.] Oh, yeah. They all have. Oh, yeah. John Paddock, Jim Atcitty, and Larry Manuelito, and Pat Chee Miller, and there must be 8 or 10 of the, everybody who could provide everything under the sun. And I don't know why because it's goddamn Chapella and Zah who gave them those names. How would the goddamn Ken Ballen know? Right?

[See pp. 393–399.]

Mr. BALLEN. Mr. Brown, on January 7, 1989, did you meet with Peter MacDonald, Sr. and Peter MacDonald, Jr. at Durant's Restaurant in Phoenix, AZ?

Mr. BROWN. I did.

Mr. BALLEN. Were you wired at the time again?

Mr. BROWN. I was.

Mr. BALLEN. Now, you testified during your testimony this morning, Mr. Brown, that Peter MacDonald asked you for $50,000 during the meeting early in January at Durant's Restaurant?

Mr. BROWN. That's correct.

Mr. BALLEN. You met with Peter MacDonald, Sr. and Peter MacDonald, Jr. on that date and were fitted with a body recorder; is that correct?

Mr. BROWN. That's correct.

Mr. **Ballen**. Mr. Ginsberg, could you proceed to play the tape of January 7, 1989?

[Mr. **Brown**.] What should I tell them? They are going to hammer me on that. They are going to hammer me on the $25,000. My attorney wrote a demand letter. Is there any way that you guys could borrow the money to pay some interest or something on that?

[Mr. **MacDonald**, Sr.] Maybe we can.

[Mr. **MacDonald**, Jr.] You should have, you should have, McDonald talk to him or on that. That is something that I feel we got to do, too, on that score. Because I have referred it over to my attorney and he's aware of it, you know I think he's got a call into McDonald, so I think that needs to be worked out between them. Whatever arrangements, whatever suitable arrangements can be made.

[Mr. **Brown**.] Yeah. If I had my checkbooks maybe I could loan you the money.

[Mr. **MacDonald**, Sr.] I was going to say that. One way of doing it is a new note—say $50,000. I was thinking of that. As a matter of fact I was sitting here thinking about it.

[See p. 400.]

Mr. **Ballen**. Mr. Brown, at the end of your meeting with Peter MacDonald, Sr. and Peter MacDonald, Jr. at Durant's Restaurant, did Peter MacDonald, Sr. again approach you at the side and renew this request for an additional $50,000 note?

Mr. **Brown**. He did.

Mr. **Ballen**. Mr. Ginsberg.

[Mr. **MacDonald**, Jr.] Well, just hang in there. Have your attorney do your, your job. And if you don't know, say so. If they want to be that way about it, it'll all work out.

[Mr. **Brown**.] Yeah. Okay.

[Mr. **MacDonald**, Sr.] At one time, let's—we might be coming to you for a note for about $50,000.

[Mr. **Brown**.] All right.

[Mr. **MacDonald**, Sr.] I'll pay you 25 with interest and then I'll pay my lawyer with the rest of it.

[Mr. **Brown**.] Yeah. Okay. All right.

[Mr. **MacDonald**, Jr.] Say Merry Christmas and Happy New Year to Carol for us.

[Mr. **Brown**.] All right. Same to you guys.

[Mr. **MacDonald**, Jr.] Let's go.

[Mr. **Brown**.] All fine. I'm gonna stay here and powder my nose a minute.

[Mr. **MacDonald**, Jr.] Okay.

[Mr. **Brown**.] All right.

[Mr. **MacDonald**, Jr.] See you later.

[Mr. **Brown**.] Okay. Bye.

[See p. 401.]

Mr. **Ballen**. Mr. Ginsberg, I'm going to ask you to play that last tape again and have them lower the volume, because if the volume is slightly lowered then the tape might be more audible.

[Mr. **MacDonald**, Jr.] Well, just hang in there. Have your attorney do your, your job. And if you don't know, say so. If they want to be that way about it, it'll all work out.

[Mr. **Brown**.] Yeah. Okay.

[Mr. MacDonald, Sr.] At one time, let's—we might be coming to you for a note for about $50,000.

[Mr. Brown.] All right.

[Mr. MacDonald, Sr.] I'll pay you 25 with interest and then I'll pay my lawyer with the rest of it.

[Mr. Brown.] Yeah. Okay. All right.

[Mr. MacDonald, Jr.] Say Merry Christmas and Happy New Year to Carol for us.

[Mr. Brown.] All right. Same to you guys.

[Mr. MacDonald, Jr.] Let's go.

[Mr. Brown.] All fine. I'm gonna stay here and powder my nose a minute.

[Mr. MacDonald, Jr.] Okay.

[Mr. Brown.] All right.

[Mr. MacDonald, Jr.] See you later.

[Mr. Brown.] Okay. Bye.

[See p. 401.]

Mr. Ballen. Mr. Brown, is that transcript an accurate reflection of your recollection of the conversation with Peter MacDonald, Sr. on January 7, 1989?

Mr. Brown. It is.

Senator DeConcini. Excuse me, Counsel. When he's asking you about the transcript, I take it he's referring to the tape?

Mr. Ballen. Correct.

Senator DeConcini. Now, do you have a typed transcript in front of you——

Mr. Brown. I do.

Senator DeConcini [continuing]. Dated January 7, 1989, conversation between Bud Brown and Peter MacDonald, Jr. and Peter MacDonald, Sr.?

Mr. Brown. I do.

Senator DeConcini. Have you read that?

Mr. Brown. Yes.

Senator DeConcini. Is that the same as you understand to be what was played on the tape?

Mr. Brown. Yes, sir.

Senator DeConcini. Without objection we will insert that particular transcript in the record.

[Transcript dated January 7, 1989, of the conversation between Bud Brown and Peter MacDonald, Jr. and Peter MacDonald, Sr. appears in appendix.]

Mr. Ballen. Thank you, Mr. Chairman.

Mr. Brown, you testified this morning and Peter MacDonald, Jr. testified yesterday that both Peter MacDonald, Jr. and Peter MacDonald, Sr. would relay Peter MacDonald, Sr.'s request for cash from you by asking for golf balls. Is that correct, sir?

Mr. Brown. That's correct.

Mr. Ballen. Turning your attention back to your meeting on November 22, 1988, with Peter MacDonald, Sr., did Peter MacDonald, Sr., at the end of your meeting, ask for more cash by requesting funny golf balls?

Mr. Brown. Yes, sir.

Mr. Ballen. Mr. Ginsberg, if you can play that portion of November 22.

[Mr. Brown.] Thank you, my friend.

[Mr. MACDONALD, Sr.] All right. I'll let you know, and then if I do come tomorrow maybe we can get together. Can I still—I don't know. Is there a way you can get some of those funny golf balls——

[Mr. BROWN.] Maybe, maybe we——

[Mr. MACDONALD, Sr.] That——

[Mr. BROWN.] Maybe we can play some—well, I've got some in my golf bag. Yes.

[Mr. MACDONALD, Sr.] That stuff——

[Mr. BROWN.] Yeah, yeah.

[Mr. MACDONALD, Sr.] Know what I mean?

[Mr. BROWN.] Yeah—[portion inaudible.]

[See p. 402.]

Mr. BALLEN. When he was asking for the funny golf balls was he asking for cash?

Mr. BROWN. Yes, sir.

Mr. BALLEN. That's what you understood?

Mr. BROWN. Yes, sir.

Mr. BALLEN. That's what you testified to this morning?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Now, Mr. Brown, on November 22, 1988, in addition to the cover-up on the $25,000 and on the BMW automobile for Peter MacDonald, Sr., did Peter MacDonald tell you what to say if you were questioned on the Big Boquillas transaction, itself?

Mr. BROWN. He did.

Mr. BALLEN. Mr. Ginsberg.

[Mr. MACDONALD, Sr.] What they may ask there, these guys, is when and if, probably going to ask, I would, in addition to this I would think one thing they would ask is when, if any, did you tell the Chairman or Mr. MacDonald that you were interested in selling the Big Boquillas to the tribe? They will ask you that. And, and, or did you tell him or does he know about it or did you and the Chairman have any conversation on that? They'll ask you that question, I'm sure. As sure as I'm sitting here. And you have to come up with an answer. Obviously we can't say that I never did.

[Mr. BROWN.] Right.

[Mr. MACDONALD, Sr.] It won't sound right. Certainly he did, but after I mentioned it he told me the proper procedure to follow through, and at the point he made it, he made a remark, and I agreed with him that, since he and I are friends, that he, that you should do this on your own and not get him involved in any way whatsoever.

Mr. BALLEN. Mr. Brown, that was a lie, wasn't it?

Mr. BROWN. Yes, sir.

Mr. BALLEN. Mr. Ginsberg.

[Mr. MACDONALD, Sr.] And that was it. And also if then they say any other time after Hawaii did you talk to him? Maybe once or twice somewhere but, but the understanding I remember distinctly was that the chairman did not want to get involved and I didn't want to get him involved because we were friends and so I just dealt with the people.

[Mr. BROWN.] How does the tribe feel now? What's—are they happy with it and would they sell it for $100 million?

[Mr. MACDONALD, Sr.] Not $100 million, no.

[Mr. BROWN.] Yeah.

[Mr. MacDonald, Sr.] For, for $40 million, I told you. Heck, you and I could make some more money on that.

[Mr. Brown.] Yeah. [Laughing.]

[See p. 403.]

Mr. Ballen. Mr. Brown, when discussing the possible resale of the Big Bo Ranch, and Peter MacDonald said to you, "Heck, you and I could make some more money on that," how much money had Peter MacDonald already made?

Mr. Brown. How much had he been paid?

Mr. Ballen. Yes; by you?

Mr. Brown. I testified earlier, including the BMW, the $25,000, and the cash funds, I would estimate—and to his son—somewhere in the neighborhood of $100,000 to $125,000.

Mr. Ballen. And, of course, his share you promised him was considerably more than that?

Mr. Brown. That's correct.

Mr. Ballen. Mr. Chairman, that concludes my questioning of the witness.

Senator DeConcini. John, do you have some questions?

Senator McCain. Thank you very much, Mr. Chairman.

Mr. Brown, it is my recollection that after the sale of the Big Boquillas Ranch there was an investigation conducted by the Navajo Tribe. Do you remember that?

Mr. Brown. I do.

Senator McCain. That was conducted by the Navajo attorney general's office, or by the tribal chairman's office?

Mr. Brown. I do not know.

Senator McCain. Do you remember the conclusions that were reached as a result of that investigation by the Navajo Tribe?

Mr. Brown. No, sir.

Senator McCain. Mr. McDonald, do you remember?

Mr. McDonald. Senator, I think, if I am not mistaken, I was aware that Michael Hawkins conducted an investigation, and when I first represented Mr. Brown I had asked him if he would share with me the results—this was within the first week—and he indicated that he could not share those with me. So I was never able to find out what Mr. Hawkins' findings had been from his investigation.

It was my understanding he had been retained by the Navajo Tribe to conduct the investigation.

Senator McCain. But, to your knowledge, in the course of your work there was never any action taken of any kind by the Navajo Tribe as regards to the sale of the Big Boquillas Ranch?

Mr. McDonald. No; it was my understanding, just from rumors I had heard, that he had found no wrongdoing. But this was just rumors on the street. I never was able to read the report, and I was unable to have him provide me an answer because he said it was privileged, and if the tribe would give it to me I could get it, and they didn't give it to me.

Senator McCain. You requested the report from the tribe and they didn't give it to you?

Mr. McDonald. I didn't request it. I felt it would be inappropriate, and I figured in due time I would probably come to find out the results of that, but before I ever made the inquiry I realized that I couldn't.

Senator McCAIN. Thank you.

Mr. Brown, you have stated in your testimony on a couple of occasions that the agreement between you and the chairman was that you would pay him in small sums of money—relatively small sums of money—a total of somewhere between $500,000 and $750,000; is that an accurate depiction of your testimony?

Mr. BROWN. I don't have the actual records and figures with me, but yes, sir, I think that's what I testified to.

Senator McCAIN. On what occasion was this agreement made between you and the chairman?

Mr. BROWN. After the—I think after the contract had been signed between Tracy Oil and Gas, and Tenneco.

Senator McCAIN. Verbally you stated to the chairman that you would provide him with those amounts of money, and verbally that was the agreement between the two of you?

Mr. BROWN. That is correct.

Senator McCAIN. You referred at some point about the lease that was cancelled at Lake Powell. Do you have any recollection of the circumstances surrounding the cancellation of that lease?

Mr. BROWN. No, sir; I knew some of the people. I knew Dave Sells because he lives in Scottsdale, but I don't have any knowledge, whatsoever, of the lease or the terms or any of their business dealings.

Senator McCAIN. Do you recollect basically that the deal was concluded and signed and sealed, and then, with the change of administration, that agreement was made null and void?

Mr. BROWN. Yes, sir; I'm aware of that.

Senator McCAIN. You do remember that?

Mr. BROWN. Yes.

Senator McCAIN. I just have one final question, Mr. Brown, and that is: it is hard for me to understand, given the large amount of money in "profit" that was entailed in this sale, the $26 million flip, as it has been called in this hearing, up to $33 million, how did you think that that would go unnoticed or unspeculated upon, since it is such a very large amount of money?

Mr. BROWN. I didn't think that it would go unnoticed or unspeculated, and I never operated under that illusion. I felt, and still feel, that this ranch, at $68 an acre, including what all they received in the way of assets and minerals and the operating lease that they have, is a good value. It is well worth the money.

I had the opportunity to look at the records that the BIA had over the last 20 years of the ranches that the Navajo Tribe had purchased, and not in one instance was there one ranch that I found in their records that was ever purchased for less than $100 an acre. Most of them were in the vicinity of $200 to $250 an acre. Granted, they weren't 750,000-acre ranches, but in the final analysis the various people who have made the various appraisals—and you know and I know that the appraisers' views differ—I feel that the base of their prosperity is this land and this ranch.

Senator McCAIN. Mr. Brown, I understand that point, and I think you have addressed it from a person who is knowledgeable on that aspect of it. What I don't understand is that within five minutes, in the view of some, as to when the documents were filed, or a period of 2 days, that that land jumped in value from $26 million to $33 million. That's the aspect of it that I don't understand how you would feel that would not be a subject of intense scrutiny and controversy.

Mr. **Brown**. Senator McCain, this is not uncommon. Double escrow is done daily in land and buildings. I might give you an example. I believe it was Mr. Marvin Davis in Denver who purchased part of the Phipps Estate on a Friday for $5 million and sold it on a Monday for $15 million, just as an example. He probably had a pretty pre-cut buyer in his pocket.

Senator **McCain**. Thank you.

Thank you, Mr. Chairman.

Senator **DeConcini**. Thank you, Senator McCain.

Counsel, do you want to follow up on some questions?

Mr. **Ballen**. Mr. Brown, you said that, in your view, the value of the ranch was worth it and that this flip was a common real estate practice; is that true?

Mr. **Brown**. That's correct.

Mr. **Ballen**. Isn't it a fact, Mr. Brown, that the value of this ranch was inflated by, (a) the amount of profit that you were taking; and, (b) the amount of kick-backs you were paying to Peter MacDonald? If somebody went in there and wanted to buy that land legitimately, Mr. Brown, and not pay kick-backs and not enrich themselves, that land would have been sold to the Navajos cheaper; isn't that a fact?

Mr. **Brown**. I think if the Navajo Tribe had had $26,250,000 cash, I know that Tenneco would have sold it to them, probably. I also know, Mr. Ballen, that the Navajo Tribe, on all the ranch purchases that they have made, have paid cash for them. To my knowledge this is the first ranch that they have ever financed. The fact that Tracy Oil and Gas made it possible for them to get financing that they could live with I think was a benefit.

I also think, Mr. Ballen, that the mineral deposits that the Navajo Tribe received with this ranch—50 percent of the minerals that Tenneco had, which is what we negotiated with Tracy Oil and Gas and was passed on to the Navajos—will probably prove in history that the minerals are worth more than surface value of the land.

Mr. **Ballen**. Mr. Brown, are you telling the members of this committee today that it was a good deal for the Navajos that you and Tracy and Peter MacDonald profited on the inside from this transaction? Are you telling this committee that that was a good deal for the Navajos?

Mr. **Brown**. I'm not saying that, Mr. Ballen. What I'm saying is that what I did with Peter MacDonald was wrong. I admit that. As Harry Truman once said, "If you can't stand the heat, don't go in the kitchen," and I wish I was somewhere other than in the kitchen, but I'm not.

Mr. **Ballen**. You're in the kitchen here today.

Mr. **Brown**. I know that. I think the value that the tribe received for the land is there. Yes, sir.

Mr. **Ballen**. But not at the price they paid for it, which had your cut, MacDonald's cut, and Tracy's cut in there.

Mr. Chairman.

Senator DECONCINI. Mr. Brown, I understand you have been forthcoming in the sense of concurring or agreeing that this was a wrong thing to do by inflating the price. You said earlier on that you helped Chairman MacDonald establish the MacDonald Foundation to do human interest and health projects for worthy Navajos who couldn't afford it. Is that a correct summary?

Mr. BROWN. It was not limited specifically to the Navajos, but I did help establish the foundation. Yes.

Senator DECONCINI. And the purpose of that foundation was what?

Mr. BROWN. To provide medical treatment, primarily, for the Native Americans who could not afford or had no other place to go.

Senator DECONCINI. You said you did that on the basis that you wanted to help those people?

Mr. BROWN. Yes, sir.

Senator DECONCINI. That was your participation?

Mr. BROWN. Yes, sir.

Senator DECONCINI. Because I have a hard time, Mr. Brown. I've known you by reputation, and, indeed, you are a successful businessman, and you've done some things for various Indian tribes that have been, just as you said, to the benefit of those people. Here is a story laid out where—would you agree?—the Navajos lost roughly $7 million by having to pay the $33 million rather than a lesser amount and, in particular, probably, as you said, the $26 million?

Mr. BROWN. Excuse me, please.

[Speaking with lawyer.]

Mr. BROWN. I think this ranch, Senator, at $68 an acre, is a good value.

Senator DECONCINI. Is it a better value at $50 an acre?

Mr. BROWN. Certainly.

Senator DECONCINI. Is that what Tracy Oil paid for it?

Mr. BROWN. I think they paid about $55.

Senator DECONCINI. About $55 an acre?

Mr. BROWN. I think so.

Senator DECONCINI. Is that what Tracy paid for it?

Mr. BROWN. I think so.

Senator DECONCINI. It's a better value at $55 an acre than it is at $68 an acre?

Mr. BROWN. I think so. Yes.

Senator DECONCINI. Were those two sales within closing date within days of each other?

Mr. BROWN. Yes, sir.

Senator DECONCINI. Based on that, is it not true that the Navajo people, or the tribal government, which represents the people, paid an extra roughly $7 million for that land than if they had bought it at $55 an acre?

Mr. BROWN. If they could have bought it, or if Tenneco had a representative that could negotiate and do the work that I did—I worked for approximately over 1 year in flying people to the ranch, the various committees, spending a lot of time—I don't know whether 1 year's worth of work is worth $7 million or not.

Senator DeConcini. Well now, Mr. Brown, you were being paid a commission from Tenneco to make the first sale?

Mr. Brown. That is correct.

Senator DeConcini. Did Tenneco know that you were going to sell it again within a short period of time?

Mr. Brown. They found out. Yes, sir. I talked with Mr. Tracy and Mr. Jans and they talked.

Senator DeConcini. They were willing to close on your first sale where you got the commission to Tracy Oil and Gas based on the fact that there was another sale right around the corner; is that correct?

Mr. Brown. They weren't—they probably weren't willing, but they were obligated by contract to do so. Yes, sir.

Senator DeConcini. Now, your obligation was to Tracy Oil at that stage; is that correct?

Mr. Brown. That is correct.

Senator DeConcini. So did you tell—excuse me. Your obligation was to Tenneco, because they were paying your commission; is that correct?

Mr. Brown. Yes, sir; That is correct.

Senator DeConcini. Did you tell Tenneco about the arrangement to sell it to the Navajos for some $7 million more?

Mr. Brown. Sure. In March or April Mr. Tracy talked to Mr. Jans.

Senator DeConcini. So Tenneco knew that Tracy Oil was going to make roughly a $7 million profit on the sale?

Mr. Brown. I'm sure they did. Yes, sir.

Senator DeConcini. And, of course, you knew that Tracy was going to make that profit, as you testified.

Mr. Brown. Yes, sir.

Senator DeConcini. You knew how it was going to be divided?

Mr. Brown. Yes, sir.

Senator DeConcini. So you knew that the Navajo people were paying $7 million more than what they might have been able to buy that land for. Is that a fair statement?

Mr. Brown. That's a fair statement, if they could have done it.

Senator DeConcini. Did you ever talk to Tenneco about selling it to the Navajos?

Mr. Brown. Tenneco offered the ranch to the Navajo Tribe in 1971 for I believe $21 million. The final—and it went before the tribal council for a vote, and I have seen those documents—I think, out of the total tribal council members present, 35 voted for it and 50-some voted against it.

Senator DeConcini. So they turned it down?

Mr. Brown. No; the reason they turned it down is they didn't have the money, and the final letter from the BIA appraiser said the only person in the world who has this much money is God, and that was the BIA's final analysis on that appraisal.

Senator DeConcini. What you're saying is that back in 1971 they didn't have the money?

Mr. Brown. Yes, sir.

Senator DeConcini. Right?

Mr. Brown. Yes, sir.

Mary. I really felt bad, and I let the board know about it. I told the principal how I felt, that it was wrong and that we were releasing him to some other kids that could be harmed just like that.

Ms. Soller. Do you know whether this teacher who was teaching at Hoteville is teaching anywhere else now?

Mary. Yes; he is.

Ms. Soller. Where is that?

Mary. In New Mexico.

Ms. Soller. Did you talk to the people at the new school about what had happened at Hoteville?

Mary. Yes; I went on my own, and I went over there. I told this person over there why I was there. I was deeply concerned and I didn't want anything to happen to those children over there.

I felt that they should have gotten in touch with the board, and found out why we had let him go.

Ms. Soller. Did anyone at the new school contact the board?

Mary. I guess they did, but they weren't told anything. They didn't contact the board, but they did contact the school.

Ms. Soller. The principal? But as far as you know, nobody contacted the board?

Mary. No; because I never heard about it.

Ms. Soller. Now, the parents' group that you have at Hoteville—the parents who come to that, those are parents of children that have been abused in what setting?

Mary. The way I got that parents group started over there was that when this thing happened.

Ms. Soller. By "this thing," you mean which one?

Mary. At the school, and then when I heard about—well, I always knew about the *Boone* case.

I met Sylvia, and through Sylvia, I went to their parents' meeting down there in Pollaca, and I went around the village asking other parents if they would like to go up there with me and see what it's all about.

The only person that responded was Kathleen, that came with me up there. We heard Ken and Dave and another lady there that was presenting the sexual abuse, and we came home.

We were coming home. We were talking, you know, just talking about things, and that's when Kathleen told me, "Did you know about me?" And I said, "No, I don't know about you."

"I thought you knew this, that's why you asked me along." I said, "I don't know anything of what happened in your case." Then she told me about her child.

So I knew then that it was going on in my village. But I already knew for a long time that it had been happening, but you know, we were just keeping it to ourselves.

When that happened, we formed our own group in Hoteville in October. In October we formed our group, and we started meetings. After we started meeting, then there were other village people that started coming to me and telling me of other things like this that were happening in our own village—our own relatives and our community members that were doing that to the children.

STATEMENT OF KATHLEEN, HOPI MOTHER, HOTEVILLE-BACAVI, HOPI RESERVATION

Ms. **SOLLER**. Kathleen, let me ask you for a moment.

You had a daughter who was abused, is that right?

KATHLEEN. Yes.

Ms. **SOLLER**. How old is she?

KATHLEEN. She's 7 now.

Ms. **SOLLER**. How old was she when this happened?

KATHLEEN. She was 6 years old.

Ms. **SOLLER**. Can you tell us what happened?

KATHLEEN. Well, I was giving her a bath. That was on Sunday. I gave her a bath first. After I finished with her, I was giving her a bath when somebody knocked, and I told him to come in, and this one guy came in, that was LeRoy.

Ms. **SOLLER**. That's okay.

Let me ask you questions instead, okay?

Kathleen, while you were there, did LeRoy abuse your daughter?

KATHLEEN. Yes.

Ms. **SOLLER**. By fondling her?

KATHLEEN. Yes.

Ms. **SOLLER**. Did you see this?

KATHLEEN. Yes.

Ms. **SOLLER**. Did you report it to the authorities?

KATHLEEN. Yes; I did, the next day.

Ms. **SOLLER**. That was in April 1987, is that right?

KATHLEEN. That was November 8.

Ms. **SOLLER**. All right, I'm sorry. Now I remember it.

In 1987?

KATHLEEN. Yes.

Ms. **SOLLER**. Do you know what happened to the case after you reported it?

KATHLEEN. No.

Ms. **SOLLER**. Did you finally learn in December 1988 that the case was not going to be prosecuted?

KATHLEEN. No.

Ms. **SOLLER**. Had you heard any time before that that it wasn't going to be prosecuted?

KATHLEEN. No.

Ms. **SOLLER**. Did the law enforcement officials at any time come to you after you reported it, until December, to tell you what was going to happen with your case?

KATHLEEN. No.

Ms. **SOLLER**. Is your daughter getting therapy now?

KATHLEEN. Yes; she's getting counseling.

Ms. **SOLLER**. Has the group been helpful to you—the parents' group?

KATHLEEN. Yes.

Ms. **SOLLER**. Have you had any contact with IHS mental health facilities or BIA social services for help since you reported it?

KATHLEEN. No.

STATEMENT OF RUTH, HOPI MOTHER, SECOND MESA, HOPI RESERVATION

Ms. **SOLLER**. Ruth, you're a member of the parents' group at Hotenilla too, is that right?

RUTH. Yes.

Ms. **SOLLER**. Do you have a child that's been abused?

RUTH. Yes.

Ms. **SOLLER**. Is that a son or a daughter?

RUTH. A son.

Ms. **SOLLER**. How old is he?

RUTH. He is 6 years old.

Ms. **SOLLER**. Can you tell us what happened in that case?

RUTH. Well, we went to a dance, and after that dance was over, I was looking for my son.

Finally I found my son. They were coming up——

Ms. **SOLLER**. That's okay. I'll ask.

Would it help you if Mary told your story?

RUTH. Yes.

MARY. Her son—I guess he had been sodomized, and she went and sought help and they took him to the hospital, about 2 days later, because they were afraid to do anything.

When they took him up there, they had him tested, and he did have the signs that he was sodomized. The person that did it was a relative of theirs.

She was afraid to report this thing. They told her up at the hospital to go down to the police court and report it. But she was scared because she knew how the mother was, how the family was, that they would come right out and jump on her, and whatever. So she went straight on home.

From the IHS they went and reported it for her. They went and reported down to Seceva.

Ms. **SOLLER**. That's to the BIA Law Enforcement?

MARY. Yes.

Ms. **SOLLER**. Did he investigate the case promptly?

MARY. Yes.

Ms. **SOLLER**. Has the prosecution been moving forward smoothly in that?

RUTH. Yes.

Ms. **SOLLER**. Has the parents' group been helpful to you?

RUTH. Yes.

Ms. **SOLLER**. Is your son in therapy?

RUTH. Yes.

Ms. **SOLLER**. How is that going?

RUTH. My son is doing pretty good now, beginning to talk about it.

Ms. **SOLLER**. Sylvia, if I could ask you one more question, how many victims of abuse from Mr. Boone do you believe are on the reservation now?

SYLVIA. I personally never have looked into that. I don't have any idea.

Ms. **SOLLER**. How many people on the reservation right now do you think need help or therapy for sexual abuse problems?

SYLVIA. According to the list that was first found, he had about 142, 144 boys listed. But there may be others that haven't been identified on the list, and they are young fathers that now have their own families, and still have not received any counseling.

Senator MCCAIN. That was Mr. Boone's list?

SYLVIA. Yes, he had a listing of all the boys and activities that he did with the boys.

Senator MCCAIN. What was the number again?

SYLVIA. It was about 140 to 144.

Senator MCCAIN. Excuse me, may I ask a question of Sylvia?

Are these different individuals, or repeats of the same name?

SYLVIA. No; they were different individuals, and some maybe had two or three boys from a home.

Senator MCCAIN. I see.

What period of time did that cover?

SYLVIA. He's been there for 9 years.

Senator MCCAIN. So all during his tenure there?

SYLVIA. Yes; maybe 8 years, something like that.

Senator MCCAIN. Thank you.

Ms. SOLLER. Sylvia, are you now working at the Child Sexual Abuse Project?

SYLVIA. Yes; I work with Dr. Wasserman.

Ms. SOLLER. At that project, are you now seeing young children who are coming in as offenders?

SYLVIA. Definitely. It has really come up now.

Ms. SOLLER. These offenders that you are seeing, are these people who were children abused earlier?

SYLVIA. Yes.

Ms. SOLLER. Did they receive any treatment between the time they were abused and now?

SYLVIA. No.

Ms. SOLLER. Is there any treatment available at all on the reservation for offenders?

SYLVIA; No; None. The only treatment that we get is every other Monday and Tuesday, from Ken and Dave. That is, I think, something that should be prioritized.

Ms. SOLLER. How many people do you think right now are waiting for treatment or therapy or help of some kind, at Hopi?

SYLVIA. The last time I counted, our waiting list was about 38. But we have reached out to 200 plus families, you know, just in the year, and we have got more coming in.

We have referrals from other agencies now coming in to the Project for Youth and Families, the Sexual Abuse Project.

Senator MCCAIN. May I interrupt?

The question was asked of you that these offenders that are coming in now were previously abused. Were they abused by Boone?

SYLVIA. Yes.

Senator MCCAIN. Thank you.

Ms. SOLLER. What has been the response of BIA and IHS about providing further money for therapy at Hopi?

SYLVIA. It's been very hard, and we have not gotten a commitment from either agency to try to get secure funding. It was a pilot project to begin with, and I think it was funds that were allocated just to see if it would even get off the ground.

Ms. Soller. Even keeping the funding the way it is now—if that could be secured—is that enough at Hopi?

Sylvia. No.

Ms. Soller. In addition to the 38 on your waiting list, do you think that there are others out in the community who need help, that are not getting it?

Sylvia. Definitely.

Ms. Soller. Mary, what do you think?

Mary. I really think so, because some of the people in my village, I have been recommending over to the guidance center.

Now we have a counselor over at the school, that I'm referring them to, some of them.

Ms. Soller. Have you stopped referring them to the guidance center now?

Mary. Not really, because if a case is hard, then she will refer them on to the guidance center.

Ms. Soller. Go ahead.

Sylvia. Right now, the counselors that we have there at the guidance center deal with alcohol related issues, and our assistance program, and sexual abuse, I think, has just really surfaced. It's been the year, in the past 1 or 2 years, and that's where we really need the expertise. We are really being swamped by victims and offenders.

Ms. Soller. Are there victims that you are seeing that are people other than those who are abused by Boone?

Sylvia. Yes.

Ms. Soller. How many of those do you think are in the community, or do you have any idea?

Sylvia. I have no idea.

Ms. Soller. Mr. Chairman, these women also brought some other letters from other people with them today, that they have asked me to make part of the record, if that's agreeable.

Senator DeConcini. Very good.

Any evidence and material that you want to leave here with us, we will put it in the record.

I would like to ask Sylvia if I can—Sylvia, you said that you are receiving complaints from people in the villages there about others who have witnessed or had sexual abuse caused to their children by others than Mr. Boone. Is that right?

Do they give you the names of the offenders, the people who have done it?

Sylvia. Yes; they usually will disclose information. But it takes a little work to build that report up, because——

Senator DeConcini. Sure, they don't want to do that.

Is some of that family members?

Sylvia. Yes; we're dealing a lot more with incest.

Senator DeConcini. With the family members, this is far more difficult to solicit and far more difficult to turn over to any authority.

Sylvia. We have been stressing our community education through the parents' group, and I think this has developed an awareness in the community where they now feel a little more comfortable in bringing out things like that.

Senator DeConcini. Does the BIA or the tribal government has any resources to help you?

Sylvia. If there is, there's nothing there.

Senator DeConcini. There's nothing in there.

So what you've done is mostly on your own?

Sylvia. Yes.

Senator DeConcini. You have asked the BIA—has anyone talked to the BIA about any funds available for counseling or anything? And they've said there is none?

Sylvia. We just cannot come up—they have not sent anyone forward that has the expertise in dealing with sexually abused individuals.

Senator DeConcini. Have you contacted anybody in the State of Arizona? The State government?

Sylvia. The only people that will lend a hand to help the community was the attorney's office.

Senator DeConcini. The Attorney General's office?

Sylvia. Yes.

Senator DeConcini. The U.S. attorney's office?

Sylvia. U.S. attorney.

Senator DeConcini. The U.S. attorney's office.

Sylvia. Yes; the U.S. attorney's office. She's the one that contracted and paid Ken and Dave for consulting, for coming out.

Senator DeConcini. Was any contact made with the State of Arizona?

Sylvia. Not that I can recall.

Senator DeConcini. Thank you.

Ms. Soller. Mr. Chairman, I do not have any further questions.

Senator DeConcini. Senator McCain.

Senator McCain. Thank you, Mr. Chairman.

Do any of the witnesses know of any problems that exist at the high school at this time?

Sylvia or Mary.

Sylvia. I've been talking with a concerned community member. In fact, we've talked with about three of them that have children at the high school, and they are very concerned about staff there at the school.

To bring out one of the things, it's having the male staff walk through the girls' shower room, you know, going through their locker room. This has been a great concern with the parents there, and I think they have been complaining about it.

Senator McCain. Has anything been done about it?

Sylvia. Nothing up to now.

There may be a letter coming with Dr. Wasserman in regards to this, when she comes up in the next 2 weeks or so.

Senator McCain. Mr. Chairman, I'd just like to emphasize that this very tragic situation that we are observing today we have evidence of—as I mentioned in my opening statement—similar incidents throughout the country, be it in South Dakota, North Carolina, or Arizona.

I think that these witnesses are certainly a dramatic example of the effect on a community of a problem which left unchecked, in the case of Mr. Boone for some 9 or 10 years, shows the devastating impact, particularly of what Sylvia just testified to—that now offenders are being brought in that were abused by Mr. Boone and others.

I guess that we receive a lot of letters and other information to be included in the record, and one of the letters that is included in the record I guess I'd like to quote from, Mr. Chairman, because I think it summarizes it better than I can.

It's from Marian, and she says.

> In our culture, we pray every day with white cornmeal to the morning star, and to the sunrise, that our life will be straight and happy. And I pray for the safety of my children, because they are our leaders for tomorrow. They will be our future.
>
> We pray with our corn pollen, but this isn't enough. We need help. Our children need our help, so I ask you to see if there's anything you can do to better a future for our children who have been hurt by the cruel people. They deserve a chance at happiness just like anybody else in this universe.

Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Senator McCain.

Sylvia, if I could go back and ask you another question—you said that someone, do you know who?—contacted the BIA looking for assistance. Did you do that? Or did the school board do that?

SYLVIA. I know Dr. Wasserman has been.

Senator DECONCINI. In touch with the BIA?

SYLVIA. Yes; She's been working very hard at trying to get some source of funding.

Senator DECONCINI. She told you that they advised her that there was no source of funding, is that what you understand?

SYLVIA. Well, there really has been no true commitment so far from any agency. Maybe—we're still praying that something will eventually come to be.

Senator DECONCINI. I guess the best thing for us to do is talk to Dr. Wasserman, and see what she has done, and what might be done to assist her to achieve the kind of funding that you need.

Well, let me say, ladies, there are no words that fill the anguish of a parent of a sexually abused child.

I do thank you for being here. I intend to yield to Senator Daschle.

I just want to say that your experiences are not the only ones that have occurred, and when we reconvene later in February, we will hear other tragic stories, I'm sorry to say, and to advise the audience here, from other tribes around the Nation. Not that it's any solace, but I think it's part of the record we are building here, and your testimony has certainly raised this issue to a level that I hope and believe will not be ignored any longer, at least from the Congress, as to making available the appropriate type of resources that might be of some help.

Obviously, too, from this Senator, it's a problem that is extremely difficult, as it is in any society, sexual abuse and incest. You need to have a long planning education program that deals with the family and the value system and the society that we all want.

I greatly appreciate your testimony here today.

Senator Daschle.

Senator DASCHLE. Thank you, Mr. Chairman.

I will be very brief, too.

Senator DeConcini. Take as long as you like.

Senator Daschle. I want to associate myself with your remarks and those of Senator McCain.

We've had testimony concerning just about every kind of crime, graft, corruption—yesterday we had somebody from organized crime.

But I don't know that one can hear anything more outrageous than what you have described, and I know it's difficult for anyone to talk publicly about something so personal. You're courageous, and you deserve to be commended for the articulate way in which you've presented the problem to all of us.

I think that three points need to be emphasized.

First of all, this isn't just a problem on reservations in Arizona. We have them on South Dakota, and across the country.

Second, they're not just a problem associated with reservations. It's a pervasive problem all over the country, and while our scope is with Indian people, the whole Congress needs to be concerned with this issue.

Third, I think it's more symptomatic of problems that exist that we have to address the fundamental, the root causes of this. To the extent that we can do that, I hope that we can find solutions, as you've tried to address the problem today.

I would only ask two questions.

The first relates to testimony we received a couple of days ago from the BIA. The BIA reported to us, as they discussed their agenda, their budget, that they would be adding $3 million to the budget for counseling purposes.

I've got my own view of that amount of money. They indicated that meant about 100 people in the country would now be directed to assist in counseling for child abuse purposes.

What is your response to that? Is that adequate?

Mary. Sylvia.

For the entire country.

Mary. I don't feel that it would be adequate enough for the proper counseling that we need.

In Arizona, when this little girl was molested and murdered in Flagstaff, 2 hours from where we live, the whole system was there the next day to have professional people within that system.

We've been out, and the numbers are growing. All these children that are abused—there are a lot of them that are in their early twenties, and they're abusing, and it's going to be a lot harder. I think it's probably going to take a lot more money than that.

We can't just have regular counselors there. They have to be specialized in this field, to help, to make a difference.

Senator Daschle. As a follow-up into the first question, what would be the appropriate number of counselors that you'd have to have on your reservation to do the job well?

Mary. Right now, we've got a proposal projecting for at least three clinicians, I believe, and two psychologists.

Senator Daschle. You're talking about five professional people, just on your reservation?

Mary. Yes; because right now, we don't have anybody.

We've got the mental health technicians there, but they've got their load, and it's way over, and a lot of their cases are referred to the sexual abuse, and our cases are referred to them. But it's still just—we are just swamped.

Senator **Daschle**. The second question—you've dealt very effectively in my view with what you think to be the most proper solution to the victims.

We also have the question of what to do with the offenders. And the second question takes two parts.

What has currently been your experience with the offenders? What has happened to them?

Second, assuming that whatever has happened to them is inadequate, what ought to be done to offenders, both in terms of helping them as well as punishing them?

Sylvia. Turned in, you know, prosecuted. Three or four of them now have been turned over to the Federal agency down in Phoenix, and are going through the Federal judicial system down there.

But there are more cases being reported, I think, that are finally stepping in and taking it seriously, and they're beginning to have the State take over these cases.

Senator **Daschle**. I'm not sure I know what that means when you say they're going through the Federal judicial system. Does that mean they're being provided with counseling? Or does that mean they're thrown in the slammer? What happens to them?

Debra. There is a case that I know of, of an uncle that molested his niece, and he was sent off the reservation for six months, just locked up—no type of therapy, nothing. And he's back on the reservation.

This is the situation that happens out there a lot.

It's my opinion that sexual abuse is learned behavior, and in order to make any type of a difference, it's going to take real, intense therapy. And it's not something that I see could be reached in 1 year.

There's still a possibility that my children may grow up to be abusers, and that's frightening for me, especially with the type of counseling—it's great for what it is, but it needs to be more.

I mean, I don't want my children to grow up like that. They learned this, and if it isn't dealt with in the proper way, and if they aren't allowed to vent their anger and allowed to work through all this, then there is that possibility, and that's how a lot of people out there—yes, there needs to be a punishment also with it. But it has to be unlearned, too, and that's going to be real intense.

Senator **Daschle**. Thank you, Mr. Chairman.

Senator **DeConcini**. That is a very good question. A lot of counseling is necessary, and the perpetrator of these acts needs to be criminally prosecuted, and I suspect counseled too.

But certainly the victims and their families need counseling, if we have to set any priorities, and it seems to me that we have to do that. Senator Daschle's question is just so pertinent as to what you do need there. That's just what you feel the problem is right now.

As you get into it, and if there were counselors, and if it was available, you don't know how much might be asked of those people to participate in counseling and expanding the program.

Thank you very much, ladies. We appreciate your being here.

I would ask that the members of the committee would meet with the Chairman for just 5 minutes after these hearings, in the room behind us here.

The committee will stand in recess until February 21, at approximately 10:15 a.m., when we will continue the hearings.

Yes, Sylvia?

SYLVIA. On behalf of the parents and of our community, I would like to really thank Senator McCain and Mr. Lewis for coming out and listening, and pushing that understanding that we do need services out there.

Senator DECONCINI. Thank you. I'm glad you made that point.

[Material submitted for the record appears in appendix.]

Senator DECONCINI. The committee will stand in recess.

[Whereupon, at 3:25 p.m., the special committee was adjourned, to reconvene at 10:15 a.m., February 21, 1989.]

APPENDIX

Additional Material Submitted for the Record

FILED

OCT 12 1988

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATE SELECT COMMITTEE ON
INDIAN AFFAIRS

The United States Senate
Washington, D.C. 20510,

Applicant.

Misc. No. 88-0316

ORDER

Upon consideration of the application by the Senate Select Committee on Indian Affairs, and upon determining that the procedural requirements set forth in 18 U.S.C. § 6005 have been satisfied, it is, this 12th day of October, 1988,

ORDERED That Donald James may not refuse to testify, and provide other information, at proceedings of the Special Committee on Investigations of the Senate Select Committee on Indian Affairs, on the basis of his privilege against self-incrimination, and it is

FURTHER ORDERED That no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against Donald James in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

Aubrey E. Robinson, Jr.
Chief Judge

United States District Court
for the District of Columbia
A TRUE COPY

[illegible]

By Linda L. Romero
Deputy Clerk

FILED
OCT 12 1988
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

The United States Senate
Washington, D.C. 20510,

Applicant.

Misc. No. 88-0319

ORDER

Upon consideration of the application by the Senate Select Committee on Indian Affairs, and upon determining that the procedural requirements set forth in 18 U.S.C. § 6005 have been satisfied, it is, this 12th day of October, 1988,

ORDERED That John A. Paddock may not refuse to testify, and provide other information, at proceedings of the Special Committee on Investigations of the Senate Select Committee on Indian Affairs, on the basis of his privilege against self-incrimination, and it is

FURTHER ORDERED That no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against John A. Paddock in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

Aubrey E. Robinson Jr.
Chief Judge

United States District Court
for the District of Columbia
A TRUE COPY
JAMES F. DAVEY, CLERK
By
Deputy Clerk

FAITHCO LTD.
fka John Paddock Construction, Inc.

April 27, 1987

Corroon & Black
P O Box 42017
Tucson AZ 85733

Re: Seaboard Surety Company

Dear Debbie,

In answer to your letter of April 17, 1987, I submit the following information:

1. Management Agreement attached.
2. Current bank Letter of Credit attached.
3. I have attached a copy of a letter [illegible] explaining NACE.
4. NACE has no real value to be reflected on the personal statement.

Again, I would like to explain that Native American Construction and Engineering Inc. is merely a tool to allow us to bid on Indian Preference work. Don [illegible] has been an employee for the past 10 years. He is a close personal friend, and I have helped him get started in a Carpentry Subcontracting business, [illegible] Brothers Carpentry. When we use NACE to bid a job Don normally ends up with a subcontract to do the carpentry work.

As you can see from the information I have provided, Don's personal statement does not really mean much. His statement, would be, I am sure, not very strong. But since we have full control of the financial management of NACE, I don't feel concerned with this.

If I can be of any further help in this matter, please let me know.

Sincerely,

John A Paddock

John A Paddock

P.O. Box 307 Marana, AZ 85653 (602) 622-4500
Arizona License # B-30710 New Mexico License # GB-98 11318

PAYMENTS/GRATUITIES FOR MACDONALD FROM PADDOCK/FAITHCO

AIRCRAFT EXPENSES

DATE	AMOUNT	FORM
6/20/86	$309.75	Avra Valley (AZ) pilot and expenses paid for by Paddock for MacDonald
6/30-7/1/86	$309.56	Pilot and expenses paid for by Paddock for MacDonald
8/1/86	$352.50	Pilot and expenses paid for by Paddock for MacDonald
8/3/86	$143.00	Gallup Flying Service(NM), charter services paid for by Paddock for MacDonald "+1"
8/5/86	$263.50	Charter services paid for by Paddock for MacDonald
8/6/86	$405.60	Charter services paid for by Paddock for MacDonald
8/8/86	$193.50	Pilot and expenses paid for by Paddock for MacDonald
8/25/86	$977.60	Charter services paid for by Paddock for MacDonald
8/31/86	$165.00	Pilot and expenses paid for by Paddock for MacDonald
	$72.54	Fuel Costs
	$116.51	Fuel Costs
9/7-9/8/86	$464.63	Pilot and expenses paid for by Paddock for MacDonald
	$96.17	Fuel Costs
	$143.32	Fuel Costs
	$73.71	Fuel Costs
	$82.31	Fuel Costs
	$149.14	Fuel Costs

	$88.23	Fuel Costs
9/12/86	$220.50	Pilot and expenses paid for by Paddock for MacDonald
	$135.10	Fuel Costs
	$106.19	Fuel Costs
	$33.60	Fuel Costs
9/14/86	$325.25	Pilot and expenses paid for by Paddock for MacDonald
	$127.40	Fuel Costs
	$41.00	Fuel Costs
10/9/86	$462.00	Charter services paid for by Paddock for MacDonald
10/22/86	$559.40	Charter services paid for by Paddock for MacDonald
10/25/86	$145.00	Pilot and expenses paid for by Paddock for MacDonald
10/26/86	$174.80	Charter services paid for by Paddock for MacDonald "+4"
10/31/86	$150.00	Pilot and expenses paid for by Paddock for MacDonald
11/1/86	$647.00	Charter services paid for by Paddock for MacDonald
11/2/86	$289.00	Charter services paid for by Paddock for MacDonald "+1"
11/12/86	$1067.10	A/C rental and expenses paid for by FAITHCO for MacDonald
11/14/86	$1579.82	Charter and expenses paid for by FAITHCO for MacDonald
11/15/86	$222.00	Pilot and expenses paid for by FAITHCO for MacDonald
11/16/86	$222.00	Pilot and expenses paid for by FAITHCO for MacDonald
11/19/86	$124.50	Pilot and expenses paid for by

		Paddock for MacDonald
12/10/86	------	Paddock piloted flight transporting Wanda MacDonald from Las Vegas.
12/13/86	------	Paddock piloted flight transporting MacDonald to Farmington
1/10/8	$132.00	Pilot and expenses paid for by Paddock for MacDonald
1/12/87	------	Paddock piloted flight transporting Peter MacDonald, Jr. to MacDonald's inauguration
1/14/87	------	Paddock piloted flight transporting Hope MacDonald and Nancy Vlasis in Phoenix
2/27/87	$73.50	Pilot and expenses paid for by Paddock for MacDonald
2/28/87	$73.50	Pilot and expenses paid for by Paddock for MacDonald
3/23/87	------	Paddock piloted flight transporting Wanda and Hope MacDonald to Tucson, and then to Phoenix
6/23-6/25/87	$257.61 $182.00 $220.32	Pilot and expenses paid for by Paddock for Wanda MacDonald - San Diego trip
7/4/87	$200.00	Paddock piloted flight for Fourth of July outing to Lake Powell
7/5/87	------	Paddock piloted flight to drop Page at Window Rock and take Linda (MacDonald's daughter) and child to Albuquerque
3/28/88	$391.50	Pilot and expenses paid for by Paddock for Wanda MacDonald and two daughters - Houston trip
	---------	
SUBTOTAL	$12,568.37	
SUBTOTAL	$60,000	Estimated market value of plane trips for Peter MacDonald (excluding stand-by charge)

TRIPS TO LAS VEGAS, NEVADA

12/10-12/11/86	$663.49	Caesar's Palace room bill paid for by Paddock for MacDonald
	$36.54	Desert Rent-A-Car
8/16-8/19/87	------	Round-trip transportation for the MacDonalds and the Wares to Las Vegas
8/16/87	$345.83	Hughes NV Airport-plane expenses
8/17/87	$39.02	Sands Hotel & Casino-meal expenses
8/18/87	$562.36	Caesar's Palace-meal expenses
8/19/87	$43.50	Las Vegas Hilton-meal expenses
SUBTOTAL	$1690.74	

LOANS

12/1/87	$35,000	Personal loan to Peter and Wanda MacDonald
SUBTOTAL	$35,000	

MISC. GRATUITIES

4/20/87	$316.46	Phone bill costs accrued by Hope MacDonald when borrowing Paddock's truck, paid for by Paddock
10/17/87	$1220.00	Payment by Paddocks for Marty Tams Music for Wanda MacDonald's birthday party (another $1120.00 was paid for by the Wares)
SUBTOTAL	$1536.46	

TOTAL	$110,795.57	Payments/Gratuities to Peter MacDonald from John Paddock

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise to pay on December 1, 1988, to the order of FAITHCO, LTD. an Arizona corporation, the principal sum of THIRTY FIVE THOUSAND AND 00/100 DOLLARS ($35,000.00), together with interest at the rate of Ten and One Half Percent (10 1/2%) per annum.

If this note is placed in the hands of an attorney for collection, then the maker hereof, agrees to pay in addition to the principal and interest due hereon, reasonable attorney's fees.

EXECUTED at Window Rock, Arizona, this 1st day of December, 1987.

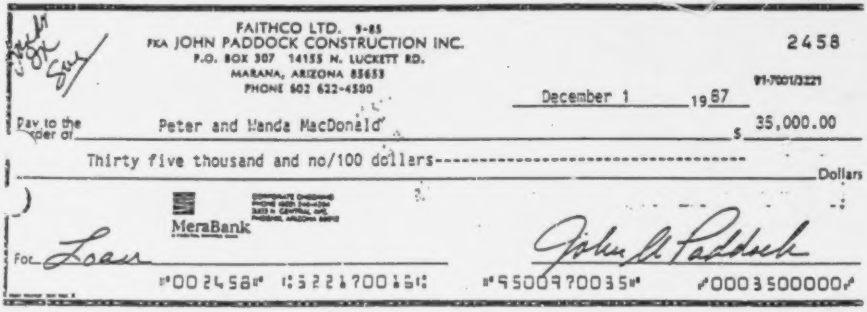
FAITHCO, LTD.
P O Box 307
Marana, AZ 85653

By John A Paddock
JOHN A. PADDOCK, PRESIDENT

PETER MacDONALD

Wanda MacDonald
WANDA MacDONALD

See attached FAITHCO, LTD. check numbered 2458 in the amount of $35,000.00



Check OK Sue

FAITHCO LTD. 9-85
FKA JOHN PADDOCK CONSTRUCTION INC.
P.O. BOX 307 14155 N. LUCKETT RD.
MARANA, ARIZONA 85653
PHONE 602 622-4500

2458

91-7001/3221

December 1 19 87

Pay to the order of Peter and Wanda MacDonald $ 35,000.00

Thirty five thousand and no/100 dollars------------------------------------ Dollars

MeraBank

For Loan

John A Paddock

⑈002458⑈ ⑆322170016⑆ ⑈9500970035⑈ ⑇0003500000⑇

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise to pay to the order of FAITHCO, LTD. an Arizona corporation, the principal sum of THREE THOUSAND TWO HUNDRED AND NO/100 DOLLARS ($3,200.00) in monthly installments of $200.00 each starting March, 1988.

If this note is placed in the hands of an attorney for collection, then the maker hereof, agrees to pay in addition to the principal and interest due hereon, reasonable attorney's fees.

EXECUTED at Window Rock, Arizona, this 10th day of February, 1988.

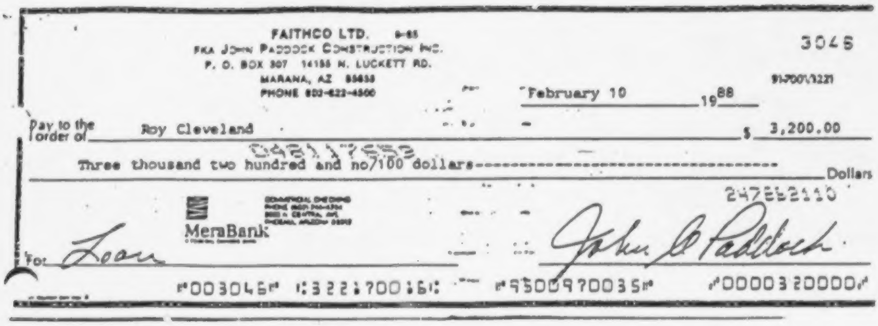
FAITHCO, LTD.
P O Box 307
Marana, AZ 85653

By: John A Paddock
John A. Paddock, President

Roy Cleveland

2-15-88

See attached FAITHCO, LTD. check numbered 3046 in the amount of $3,200.00



FAITHCO LTD. 9-85
FKA JOHN PADDOCK CONSTRUCTION INC.
P. O. BOX 307 14155 N. LUCKETT RD.
MARANA, AZ 85653
PHONE 602-622-4500

3046

91-7001/1221

February 10 19 88

Pay to the order of Roy Cleveland $ 3,200.00

0481117553

Three thousand two hundred and no/100 dollars------------------------------------ Dollars

247662110

MeraBank

For Loan

John A Paddock

⑈003046⑈ ⑆322170016⑆ ⑈9500970035⑈ ⑈0000320000⑈

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

OCT 12 1988

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

SENATE SELECT COMMITTEE ON
INDIAN AFFAIRS

The United States Senate
Washington, D.C. 20510,

Applicant.

Misc. No. 88-0314

ORDER

Upon consideration of the application by the Senate Select Committee on Indian Affairs, and upon determining that the procedural requirements set forth in 18 U.S.C. § 6005 have been satisfied, it is, this 12th day of October, 1988,

ORDERED That Pat Chee Miller may not refuse to testify, and provide other information, at proceedings of the Special Committee on Investigations of the Senate Select Committee on Indian Affairs, on the basis of his privilege against self-incrimination, and it is

FURTHER ORDERED That no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against Pat Chee Miller in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

Aubrey E. Robinson, Jr.
Chief Judge

United States District Court
for the District of Columbia
A TRUE COPY
[illegible]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
JAN 9 1989
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

SENATE SELECT COMMITTEE ON
INDIAN AFFAIRS

The United States Senate
Washington, D.C. 20510,

Applicant.

Misc. No. 89-0006

ORDER

Upon consideration of the application by the Senate Select Committee on Indian Affairs, and upon determining that the procedural requirements set forth in 18 U.S.C. § 6005 have been satisfied, it is, this 9th day of January, 1989,

ORDERED That Franz Springer may not refuse to testify, and provide other information, at proceedings of the Special Committee on Investigations of the Senate Select Committee on Indian Affairs, on the basis of his privilege against self-incrimination, and it is

FURTHER ORDERED That no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against Franz Springer in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

Aubrey E Robinson Jr
Chief Judge

United States District Court
for the District of Columbia
A TRUE COPY

JAMES F. DAVEY, CLERK
By
Deputy Clerk

P C & M Construction Company, Inc.

317 Bristol Drive .. Gallup, New Mexico 87301 .. Phone (505) 722-6427

Pat Chee Miller
President

Licensed & Bonded
N.M. License # GB98-19811
Arizona License # B-53998

Mr. Franz Springer
Springer Construction Company
2415 Princeton Drive NE
Albuquerque, NM 87107

Re: Joint Venture Agreement

Dear Franz:

I refer to the joint venture agreement between Springer Construction Company and P C & M Construction Company, Inc., dated ______________ ___ (the "Agreement").

Notwithstanding anything contained in the agreement:

1. P C & M hereby delegates to you all of its powers and obligations as Managing Party under the agreement. Thus, as Managing Party, you will have overall direction and supervision of the work to be performed under the construction contracts, and will provide office and administrative personnel, handle labor matters and deal with the owner and the owner's representative, and will make all major decisions, including but not limited to, the selection of subcontractors and suppliers, and will execute subcontracts and purchase orders.

2. The term "net profit", as used in paragraphs 3.1 and 3.2 of the agreement, means the net profit as shown on the summary sheet which is attached to the internal estimating sheets on any bid. Such net profit shall be determined by you by use of the following schedule:

1% of the first $1,000,000 of contract
Plus 3/4 of 1% of the next $3,000,000 of contract
Plus 1/2 of 1% of the next $3,000,000 of contract
Plus 1/4 of 1% of the balance on contract.

(continued page 2)

Native Hogans — Custom Homes — Commercial — Industrial
LEGAL ADDRESS: P. O. BOX 800 CROWNPOINT, NEW MEXICO 87313

Mr. Franz Springer

Re: Joint Venture Agreement

page 2

3. I will be reimbursed for my out-of-pocket field expenses which I incur in the performace of my duties under this agreement. Reimbursal is subject to your approval as Managing Party. My time and office rent and other expenses will not be reimbursable.

4. If there are any losses incurred in submission of the Bid or in the performance of the construction contract, they shall be borne 90% by Springer Construction Company, 10% by P C & M Construction Company, Inc.

Very truly yours,

P C & M Construction company, Inc.

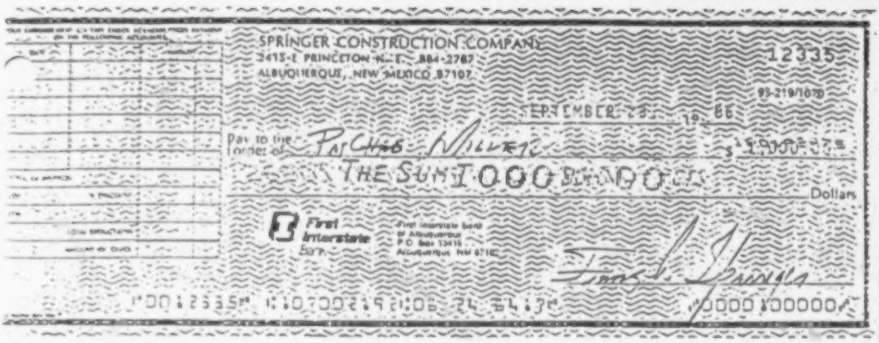
Pat Chee Miller

Pat Chee Miller, President

Accepted:

Franz C. Springer

Franz Springer



SPRINGER CONSTRUCTION COMPANY
2415-E PRINCETON N.E. 884-2787
ALBUQUERQUE, NEW MEXICO 87107

12335

95-219/1070

SEPTEMBER 23, 19 86

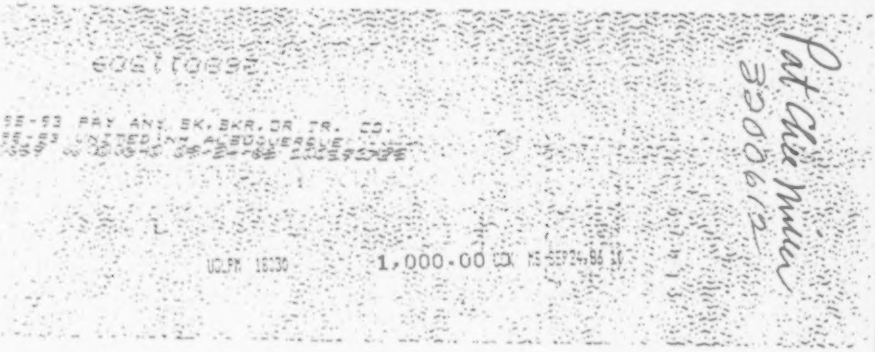
Pay to the order of Pat Chee Miller $ 1,000.00

THE SUM 1000 DOLS 00 CTS Dollars

First Interstate Bank

First Interstate Bank of Albuquerque
P.O. Box 13416
Albuquerque, NM 87103

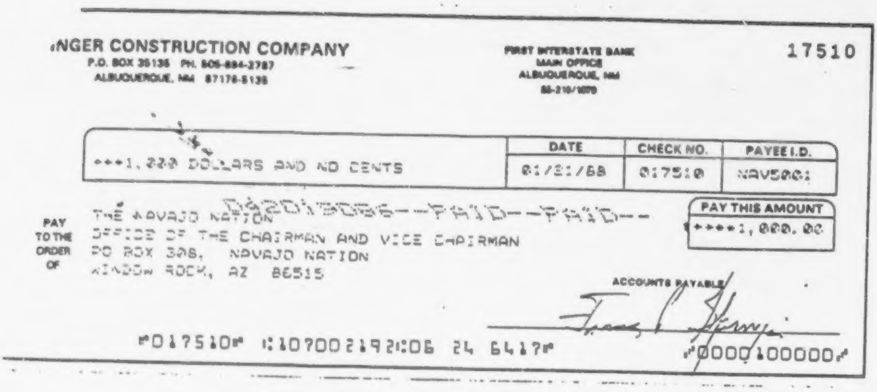
⑈0012335⑈ ⑆107002192⑆06 24 6413⑈ ⑆0000100000⑆



PAY ANY BK, BKR, OR TR. CO.
UNITED NM ALBUQUERQUE

1,000.00

Pat Chee Miller
3300612



NGER CONSTRUCTION COMPANY
P.O. BOX 35135 PH. 505-884-2787
ALBUQUERQUE, NM 87176-5135

FIRST INTERSTATE BANK
MAIN OFFICE
ALBUQUERQUE, NM
95-210/1070

17510

	DATE	CHECK NO.	PAYEE I.D.
***1,000 DOLLARS AND NO CENTS	01/21/88	017510	NAV5001

[illegible]--PAID--PAID--

PAY TO THE ORDER OF
THE NAVAJO NATION
OFFICE OF THE CHAIRMAN AND VICE CHAIRMAN
PO BOX 308, NAVAJO NATION
WINDOW ROCK, AZ 86515

PAY THIS AMOUNT
$****1,000.00

ACCOUNTS PAYABLE

⑈017510⑈ ⑆107002192⑆06 24 6417⑈ ⑈0000100000⑈

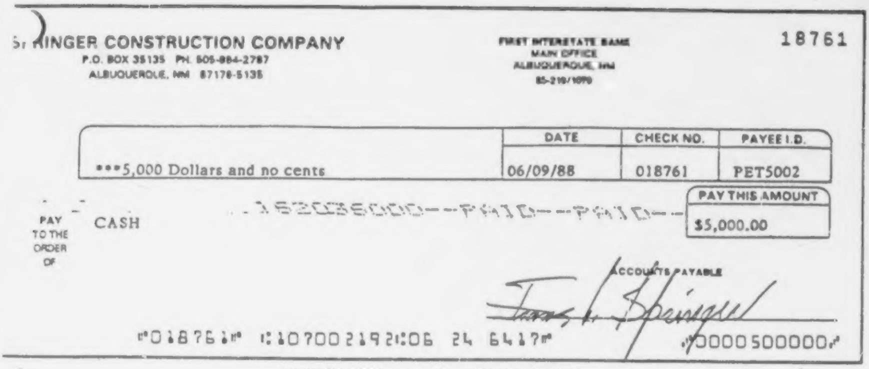
FB 88/09

PHOENIX ARIZONA

DENVER

00017 DAI 0978988 11612551 00063 P B 11612551 002

0978988 14 002



S RINGER CONSTRUCTION COMPANY
P.O. BOX 35135 PH. 505-884-2787
ALBUQUERQUE, NM 87176-5135

FIRST INTERSTATE BANK
MAIN OFFICE
ALBUQUERQUE, NM
95-219/1070

18761

	DATE	CHECK NO.	PAYEE I.D.
***5,000 Dollars and no cents	06/09/88	018761	PET5002

PAY TO THE ORDER OF CASH

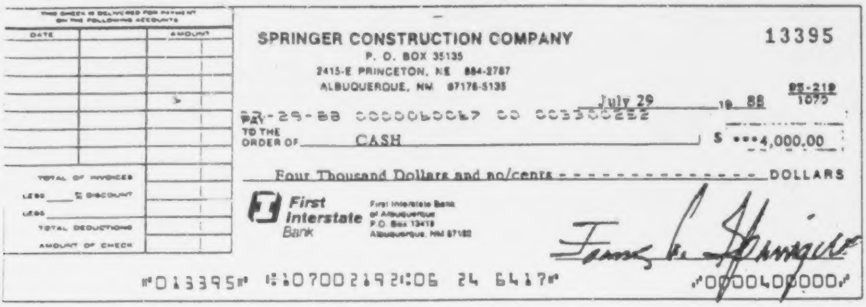
1520385000--PAID--PAID--

PAY THIS AMOUNT
$5,000.00

ACCOUNTS PAYABLE

⑈018761⑈ ⑆107002192⑆06 24 6417⑈ ⑉0000500000⑉

000820381



THIS CHECK IS DELIVERED FOR PAYMENT ON THE FOLLOWING ACCOUNTS

DATE		AMOUNT
TOTAL OF INVOICES		
LESS ____ % DISCOUNT		
LESS		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

SPRINGER CONSTRUCTION COMPANY
P. O. BOX 35135
2415-E PRINCETON, NE 884-2787
ALBUQUERQUE, NM 87176-5135

13395

95-219
1070

July 29 19 88

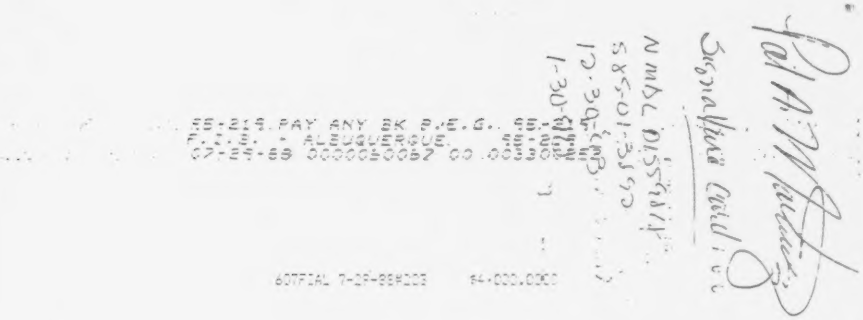
07-29-88 0000060067 00 00330C252

PAY TO THE ORDER OF CASH $ ***4,000.00

Four Thousand Dollars and no/cents - - - - - - - - - - - - - - - DOLLARS

First Interstate Bank
First Interstate Bank of Albuquerque
P.O. Box 13419
Albuquerque, NM 87192

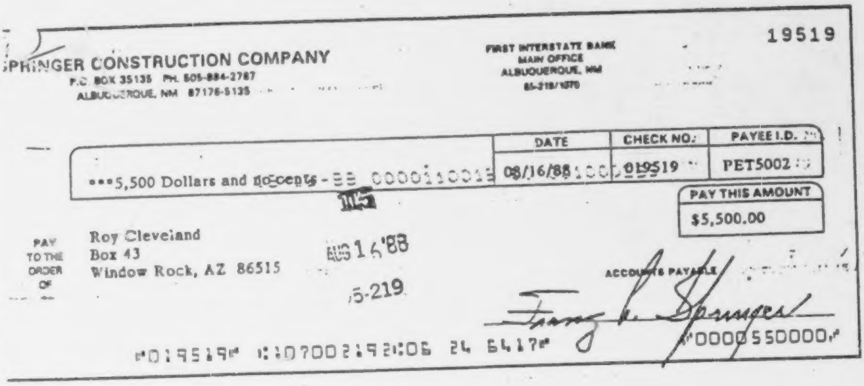
⑈013395⑈ ⑆107002192⑆06 24 6417⑈ ⑈0000400000⑈



95-219 PAY ANY BK P.E.G. 95-2
F.I.B. - ALBUQUERQUE. 95-2
07-29-88 0000060067 00 .00330

607FIAL 7-29-88H203 $4,000.0000

Pat A. Martinez
Signature Card i/c
NMDL [illegible]
585-01-3579
12-30-[illegible]
1-30-[illegible]



19519

SPRINGER CONSTRUCTION COMPANY
P.O. BOX 35135 PH. 505-884-2787
ALBUQUERQUE, NM 87176-5135

FIRST INTERSTATE BANK
MAIN OFFICE
ALBUQUERQUE, NM
95-219/1070

	DATE	CHECK NO.	PAYEE I.D.
***5,500 Dollars and no cents	08/16/88	019519	PET5002

PAY THIS AMOUNT
$5,500.00

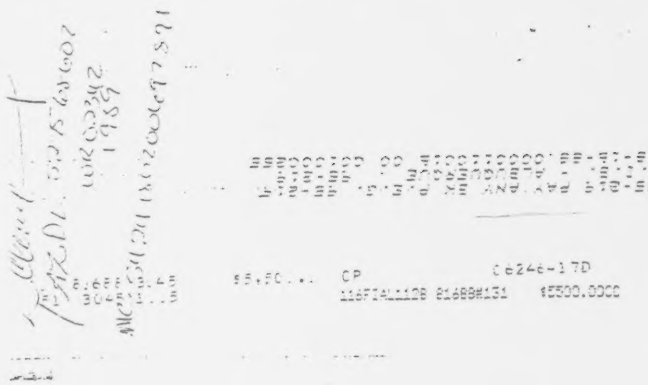
PAY TO THE ORDER OF
Roy Cleveland
Box 43
Window Rock, AZ 86515

AUG 16 '88
95-219

ACCOUNTS PAYABLE

Franz L. Springer

⑈019519⑈ ⑆107002192⑆06 24 6417⑈ ⑈0000550000⑈



$5,50... CP
C6246-17D
11AFIAL112B 81688#131 $5500.0000

ADDITIONAL RECOMMENDATIONS BY UNITED INDIAN DEVELOPMENT ASSOCIATION REGARDING "FRONT" COMPANIES

The Sub-Committee and the entire Select Committee has an excellent opportunity to correct present preference law problems and to ensure future compliance through proper amendment of the Buy Indian Act S.321.

It will be critical to adopt a clear definition of an Indian Business Enterprise (IBE) that conforms to other minority preference progams, such as that contained in the Small Business Act. We recommend the following definition:

The Business must be at least 51% owned by one or more tribes, American Indians, Native Americans, Alaskan Natives - including Aluet and Eskimo, who are U.S. Citizen(s) or permanent resident(s). In the case of any publicly-owned business, at least 51% of the stock must be owned by one or more such individuals, and its management and daily operations must be controlled by one or more such individuals. Foreign-owned firms operating in the United States must be excluded from eligibility in the program unless 51% owned by the above defined groups.

Two important factors in a certification process are the determination of Adverse Control and Affiliation.

Adverse control can be excercised by a non-Indian company through control of the IBE's finances, equipment, sources of supplies, bonding, licensing and or capital (ownership). Full disclosure of this information should be required of all owners, officers and directors of the IBE, thereby defined as affiliation with an IBE. Affiliation disclosures should be required of all owners with a 5% or greater interest in the IBE.

An efficient process would:

[] Verify American Indian ownership and management control of the firms in the Government vendor files and possibly establish a single point of contact (agency) within the Government for certification.

[] Initiate the introduction of sanctions including the possibility of criminal and civil penalties aimed at individuals and firms that falsely certify themselves as American Indian owned.

[] Include a termination clause in all future contracts for falsification of IBE status or IBE subcontractor status.

[] Exclude foreign-owned firms operating in the United States from eligibility in the Government IBE program.

Additional Recommendations

I. Buy Indian Act - S.321

A. Have the Act apply to all federal agencies with Indian funding ("for the benefit of") including ANA, BIA, IHS, Bureau of Reclamation, EPA, Army Corps of Engineers, National Park Service, Department of Agriculture, HUD and/or expenditures on federal lands for the benefit of Indians.

B. Delivery and enforcement of the Act should be implemented through a tribal entity such as Tribal Employment Rights Office's (TERO) by having:

1. The tribe act as the certifying agency,
2. The TERO serving as a local review/oversight board, and
3. Periodic review to occur during and after a "report of project impacts."

C. Require 51% ownership by a recognized Indian and no necessity to be on or near reservations for all industry classifications.

D. Employment requirements should not be a part of certification requirement, but rather a goal on each project, for example:

1. Company "Core Crew" must be $\geq$ 25% Indian
2. Project related local employment must be $\geq$ 60%

E. Adopt a uniform certification form and application process to serve as certification for all applicable federal agencies and their sub-offices (i.e. BIA and HUD).

F. Where the act applies assume that all contracts are to be first be let Indian preference.

II. Indian Preference - 7(b) Indian Self-Determination Act & Education Assistance

A. Assume all contracts are Indian preference through a (3) step process:

1. Advertise as Indian only, if < one Indian bids, then
2. Require subcontracting to Indians ≥ 25%, and
3. Indian employment preference goal to be established by local Tribe/TERO.

B. All contracts are to be issued to Indians when they are within 10% of the lowest non-Indian bid. When all bids exceed the government's estimate, the government estimate should be revised by negotiation to the lowest bidder.

C. Oversight committee or boards are not necessary if the Act is properly amended, discourage their use.

D. Include independent T/TA to implement new Indian preference policies.

III. SBA 8(a) Program

A. The BIA should be the only source of "IBE" certification (must meet "51% buy Indian" requirements).

B. Limit financial information to the business' Board of Directors and do not use overall tribal financial statements to determine eligibility.

C. In the case of joint ventures with non-Indian management require divestiture agreements, allow for Indian 8(a) applications that expand Indian goods and services availability, capability and capital resources.

D. Buy Indian rules should apply to 8(a) as a pre-eligibility determination for participation with SBA programs.

E. Tribes should only be required to maintain management control rather than management responsibility. Allow for adequate training periods of tribal members who will become CEO's and COO's later.

F. Use alternative organization methods to ensure independence and continuity of management and political leadership while increasing Indian procurement.

G. MOU improvements for DOD:

   1. The progress cited by DOD predates is inadequate, SBA must be required to seek and obtain DOD contracts for Indian enterprises.
   2. DOD must implement a procurement process to target specific contracts to Indians.

H. Centralize 8(a) nationwide application process for Indians by:

   1. assuming eligibility by virtue of BIA certification, and
   2. assuming contract support exists in all cases.

APPENDIX

Additional Material Submitted for the Record

HANSEN EXHIBITS

SPECIAL COMMITTEE ON INVESTIGATIONS' HEARINGS
MONDAY, FEBRUARY 6, 1989

[NOTE: Exhibits are listed in chronological order]

Statement of Account for The Navajo Nation from American West Aircraft Corporation from 3/87 - 2/88 (2/8/88)

United Bank of Arizona Funds Transfer for $64,269.48 from The Navajo Nation to Credit the First Interstate Bank Account of American West Aircraft Corporation (3/11/88)

AMERICAN WEST AIRCRAFT
P.O. BOX 73703 • HOUSTON, TEXAS 77273 • (713) 370-5000 • TELEX 701514

THE NAVAJO NATION
STATEMENT OF ACCOUNT
THRU 8 FEB 88

		WITH PURCHASE	WITH OUT PURCHASE
	"TRIPS"		
3-25-87	ALB-WR-DEN-WR-FLG-ALB	$ NO CHARGE	$ 4,257.36
6-11-87	HOU-FLG TET-ALB-FLG-DEN	14,900.00	18,435.60
6-26-87	BUR-WR-BUR	3,300.00	3,473.28
6-28-87	MIA-HOU-WR-PHX-ALB-BOS-MIA	15,100.00	18,318.96
6-29-87	ALL-BOS-WR-WAS-ALL	15,000.00	16,095.24
6-29-87	CEN-STA-CEN	850.00	1,134.40
7-01-87	TUL-WAS-BOS-FLG-WR-TUL	14,700.00	14,793.00
		$ 63,850.00	$ 76,507.84
	"EXPENSES"		
6-27-87	FUEL, WINDOW ROCK	$ 510.00	
6-29-87	BOSTON	765.00	
7-01-87	BOSTON	1,568.00	
7-02-87	FUEL, WINDOW ROCK	612.00	
7-08-87	MAINT. MANUAL LR 35/36	358.00	
	PARTS MANUAL LR 35/36	182.00	
	TOWBAR, KING AIR/LEARJET	690.00	
	100% WOOL CARPET 36-012	2,900.00	
	SEAT SHELLS, PASSENGER	1,800.00	
	CREW SEATS	1,015.00	
	SUPER SOUND PROOFING	2,500.00	
		$ 12,900.00	$ 12,900.00
	"MISC. EXPENSES"		
10-07-87	PHOENIX PREVIEW CATPASS		$ 300.00
10-17-87	PHOENIX (MEET. NO SHOW W/PIUCHE)		300.00
12-29-87	SAN ANTONIO (N207RP)		236.00
12-29-87	TITLE SEARCH (N207RP)		90.00
01-08-88	DALLAS (N85TH)		411.00
6-87 THRU	1-88 (MISC. EXPENSES)		1,920.00
	1.5% A MONTH ON UNPAID BALANCE		3,580.00
			$ 6,837.00
09-01-87	INTEREST, LEAR 2/MO, 2/DY	$ 23,254.64	$ 23,254.64
09-29-87	COMM. SALE, 85472 AT 6%	$ 39,000.00	$ 39,000.00
		$139,004.64	$158,499.48
	"CREDIT"		
06-25-87	WIRE TRANSFER	($ 44,900.00	$ 44,900.00
08-07-87	WIRE TRANSFER	($ 24,330.00	$ 24,330.00
	BALANCE DUE	$ 69,774.64	$ 89,259.48
03-05-88	SETTLEMENT DISCOUNT IF PAID BY 11MARCH 88		⟨25,000.00⟩
			$ 64,259.48

First Interstate Bank

P.O. Box

Houston, Texas

CREDIT

Funds Transfer

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*********************************

FT0111                          FT INCOMING MSG
  DUE TO -    113001064  TYPE - 1000
  BUF FROM - 122102031                 0096  $64,269.48
UNITED BK ARIZONA /ORG=NAVAJO NATION OGB=FOUNDERS BANK
FIR OT NA HOUSTON /CTR/
BNF=AMERICAN WEST COMPANYS /AC-2304011048

BBI=/PHN/ VIRGINIA BARKIN R 713-353-5401
0311 12TYU          96 03111558 FT61          0311 K30RVOFP    335 03111558 FT1K
```

Authorized Signature

⑆113001064⑆ ⑈2304011048⑈ 21 ⑉0006426948⑉

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PEG 35-106 10504329 11-MAR-1988
FIST 10504329 11-MAR-1988 P12
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0311 3C045

TWARDOWICZ EXHIBITS
and
ROCKY MACDONALD EXHIBITS
SPECIAL COMMITTEE ON INVESTIGATIONS' HEARINGS
MONDAY, FEBRUARY 6, 1989

[NOTE: Exhibits are listed in chronological order]

Escrow Instructions from Ticor Title Insurance for the Sale of the Big Boquillas Ranch from Boquillas Cattle Company to Karl Solomon Investments (or nominee), purchase price - $17,830,000 (2/13/85)

Promissory Note for Peter MacDonald, Jr. from Byron T. Brown for $25,000 (1/14/87)

Lease Documents from Camelback BMW/Porsche and Audi Dealership (AZ) for Chairman Peter MacDonald (1/21/87)

Valley National Bank of Arizona Wire Transfer for $25,000 from K. Tom Tracy of Reppel Steel & Supply (AZ) to Credit the United New Mexico Bank Account of Chairman Peter MacDonald (2/24/87)

Agreement between Byron T. "Bud" Brown, Real Estate Broker for John Hall & Associates (AZ) and K. Tom Tracy, President of Tracy Oil & Gas Co. (AZ) re: 2/3, 1/3 Profit Split from Big Boquillas Ranch Sale (2/20/87)

Handwritten Notes from Wayne James of Tenneco West (CA) re: Big Boquillas Expenses [Note amounts dated "1-15," "3-10," and "3-26" listed as "Bud" - "Car" for $3,000 and "BB"/"PM" for $900] (5/26/87 and 7/9/87)

Materials from Robert Pencall, Area Real Property Management Officer [of Navajo Area Office] re: "Review of the Boquillas Ranch Materials" (6/26/87)

Statement by Robert Pencall re: Conversation with Edison Woods, Navajo Tribal Appraiser, on the Big Boquillas Ranch Purchase (7/2/87)

Letter to Chairman Peter MacDonald of the Navajo Tribal Council from Floyd E. Espinoza, Acting Assistant Area Director, Bureau of Indian Affairs, Navajo Area Office re: Big Boquillas Ranch (7/2/87)

Handwritten Agreement between Byron T. "Bud" Brown of John Hall Associates and K. Tom Tracy of Tracy Oil & Gas re: 59%, 41% Profit Split from Big Boquillas Ranch Sale (7/8/87)

Consulting Agreement between Peter MacDonald, Jr., President of ROMAC Enterprises, Inc. and Byron T. Brown, President of Bud Brown Enterprises (1/1/88)

ADDITIONAL TWARDOWICZ EXHIBITS

Check to "Aloha Airlines - Air Fare" from Byron T. "Bud" Brown for $480 (11/28/86)

Two Airline Coupon Books from Aloha Airlines for M/M MacDonald and M/M Brown totaling $480 (11/28/86)

Roundtrip United Airlines Ticket for Hope MacDonald (Daughter of Chairman MacDonald) from Phoenix to Hawaii [paid for by Brown] (12/1/86)

TW 000002

CROW INSTRUCTIONS

TICOR TITLE INSURANCE

FICE 3033 No. Central Avenue, Phoenix, Arizona 85012 PHONE: (602) 263-2200

crow No. 159604SRA Date February 13, 1985 Officer Rose Morton/Sam R. Adkins

BOQUILLAS CATTLE COMPANY, an Arizona corporation HEREIN CALLED SELLER,
Attention: Wayne E. Broome
ose address is P.O. Box 9380, Bakersfield, California 93389-9380 Phone (805) 835-6060 and

KARL SOLOMON INVESTMENTS (or nominee) HEREIN CALLED BUYER,

ose address is 5900 East Central, Suite 101, Wichita, Kansas 67208 Phone (316) 684-9611.

reby employ Ticor Title Insurance Company of California to act as Escrow Agent in connection with a sale of the following-described property by ler to Buyer upon the following terms and conditions which shall be complied with by said parties on or before ~~Jul~~ 1, 1985 ~~[illegible]~~, unless a demand for cancellation has been made on Escrow Agent as provided herein: September

Description of real property is in Exhibit A of the Agreement of Sale and Escrow Instructions, A.S. & E.I., to which these instructions are attached.

is property is located in Coconino/Yavapai County, Arizona.
crow Agent is instructed that all items as checked under the columns headed Seller and Buyer are the respective obligations which each will pay.

RCHASE PRICE to be paid by Buyer	$ 17,830,000.00
presented by Earnest Money to be deposited in Escrow arnest Money - Consideration Section 2 f A.S. & E.I.	$ 100,000.00
d the balance of cash payment to be posited in Escrow on or before 5 calendar days efore close	$ 17,730,000.00
cumbrance of record, due at None th a principal sum remaining unpaid of approximately th interest as specified therein	$
ller pays installment due N/A	
yer pays installment due N/A	
d all subsequent cumbrance of record, due at None th a principal sum remaining unpaid of approximately th interest as specified therein	$
ler pays installment due N/A	
yer pays installment due N/A	
d all subsequent LANCE to be evidenced by N/A	$

yable as follows:

None

e attached Agreement of Sale and Escrow Instructions e incorporated herein as fully as though set forth rein at length. In the event that any conflict should ist between the provisions of these instructions and e A.S. & E.I., the provisions of the A.S. & E.I. shall revail.

e unpaid balance of any existing encumbrances to be paid by Buyer are proximate. Any differences shall be reflected in the:
N/A

on recordation of instruments, title insurance policy is to insure title of:
Buyer (or nominee)

om proceeds of cash payment, pay broker's commission of:
None

d pay balance of proceeds to Seller:

y future payments under deferred balance to:
None

	Seller	Buyer
Escrow Fee	1/2	1/2
Title Fee	all	
Mortgage Policy Fee		
Recording Fees:		
Deed	1/2	1/2
Deed of Trust/Mortgage		
Reconveyance/Releases		
Agreement		
Affidavit of Legal Value	1/2	1/2
Trust Fees		
Transfer Fees None		
Termite Inspection None		
Taxes:		
19 84 and prior	all	
19 85 and subsequent		all
Prorate 19 85 to close of escrow using 1984 figures		
On basis of		
Improvement Lien:		
Paving N/A		
Sewer N/A		
Other Assessments: N/A		
19____ and prior		
19____ and subsequent		
Proposed and future		
Prorate 19____ to		
Irrigation Project:		
Assessments N/A		
19____ and prior		
19____ and subsequent		
Prorate 19____ to		
Irrigation Transfer Fee N/A		
Fire Insurance to be provided in the amount of $ N/A		

Prorate:
Insurance Premiums to N/A
FHA-MIP to N/A
Interest to
Rent to None
Homeowner Fees to N/A
Collection Service Fees None
Reserve funds held under any mortgage or agreement shall be None

If personal property is to be transferred as a part of this transaction, a bill of sale will be handed to Escrow Agent for delivery to Buyer.

Escrow Agent is to assume no liability as to the sufficiency of said bill of sale or as to said personal property.

ES-1 (AZ) 11-83

SELLER

1. Will deliver to Escrow Agent a deed of the property from Seller to Buyer to be held by Escrow Agent until the terms hereof have been performed, at which time it shall record said deed.

SELLER AND BUYER

2. Will deliver to Escrow Agent all documents, pay to Escrow Agent all sums and do or cause to be done all other things necessary, in the sole judgment of Escrow Agent, to enable it to comply herewith and to enable any title insurance policy provided for herein to be issued.

3. Authorize Escrow Agent to pay, from any funds held by it for their respective credit hereunder, all amounts necessary to procure the delivery of such documents and to pay, on their behalf, all charges and obligations payable by them respectively.

4. Will each pay to Escrow Agent, upon demand, all charges payable by them respectively.

5. Authorize Escrow Agent to execute and process on their behalf, form assignments, or otherwise order changes in casualty insurance called for herein.

~~6. [illegible]~~

7. Will indemnify and save harmless Escrow Agent against all costs, damages, attorneys' fees, expenses and liabilities, which it may incur or sustain in connection with these instructions or the escrow, or any court action arising therefrom, and will pay the same upon demand.

8. Grant to Escrow Agent a lien upon and authority to reimburse itself for its charges and for any damages or expenses which it may incur or sustain in connection herewith, from all of the rights, title and interest of Seller and Buyer in all of the documents and money deposited hereunder.

9. Direct that no notice, demand or change in these instructions shall be of effect unless given in writing and that these instructions, and any supplement thereto, given mutually by the parties to Escrow Agent, shall constitute [illegible] instructions, notwithstanding any agreement which Seller and Buyer may have to the contrary.

10. Direct that all money payable hereunder be paid to Escrow Agent. Disbursement of any funds may be made by check of Escrow Agent. Escrow Agent shall be under no obligation to disburse any funds represented by check or draft, and no check or draft shall be payment to Escrow Agent in compliance with any of the requirements hereof until it is advised by the bank in which deposited that such check or draft has been honored, unless Escrow Agent specifically agrees in writing to accept liability for the sufficiency thereof.

11. Authorize Escrow Agent to act upon any statement furnished by the holder or payee, or a collection agent for the holder or payee, of any lien on or charge or assessment in connection with the property concerning the amount of such charge or assessment or the amount secured by such lien without liability or responsibility for the accuracy of such statement.

12. Direct that when these instructions have been complied with and Ticor Title Insurance Company of California is willing to issue its title insurance policy, as hereinafter provided, and when Escrow Agent's charges have been paid, it shall file for record in the appropriate public office all necessary documents required to be filed or recorded, instructing the County Recorder's Office to mail any documents recorded therein to the parties entitled thereto at the address given herein.

13. Agree that the employment of Ticor Title Insurance Company of California as Escrow Agent shall not affect any rights of subrogation under the terms of any title insurance policy.

14. These instructions shall be construed according to their plain meaning and not strictly against any party hereto.

~~CANCELLATION~~

~~15. [illegible]~~

~~16. [illegible]~~

~~17. [illegible]~~

~~Second—To [illegible]~~

~~Third—To [illegible]~~

~~Fourth—To [illegible]~~

INITIAL

18. If, under these instructions, a commission is to be paid to a real estate broker, then, notwithstanding any conflicting provision herein contained:

(A) The party obligated to pay the commission shall not acquiesce in any mutual cancellation of these instructions without having first delivered said real estate broker's written consent to Escrow Agent.

(B) Upon the cancellation of these instructions for any reason, should any funds, after deducting Escrow Agent's charges, become payable to a party obligated hereunder to pay said commission, then Escrow Agent shall pay to the real estate broker therefrom, a sum equal to one-half of the earnest money deposited by any other party and payable to the party so obligated, but not more than the full amount of such commission.

19. There shall be no responsibility upon the Escrow Agent to see that the Fire Insurance provided for herein is renewed upon expiration, or otherwise kept in force. It is the responsibility of the insured to determine that such premiums are paid and that such policies are in effect.

20. In the event this instruction is not returned to Escrow Agent properly signed by Seller and Buyer on or before the date of final compliance as shown on the face hereof, Escrow Agent shall, upon written demand by Seller, Buyer, or by Escrow Agent at its discretion, return to said Seller or Buyer any monies, documents or instruments deposited by said party and terminate its file without further notice to any other party.

NOTICES, DEMANDS OR DECLARATIONS

21. The respective addresses of Seller and Buyer as set forth herein or the last notice of change thereof filed with Escrow Agent shall be used by Escrow Agent in mailing any Notice, Demand or Declaration to either party.

22. If, for any reason, a Notice, Demand or Declaration of any kind is to be given, said Notice, Demand or Declaration shall be in writing, signed by the party giving the Notice or making the Demand or Declaration, and shall be filed with Escrow Agent. Escrow Agent shall, within three business days, send it to the party to whom it is directed by enclosing a copy of said instrument in an envelope addressed to said party at the last address which said party shall have filed with Escrow Agent and depositing said envelope with proper first class postage affixed thereto in the United States Mail.

23. The mailing of any such instrument by Escrow Agent in the manner herein provided shall constitute notice of the contents of such instrument to the party to whom the instrument is directed as of the date of such mailing, and no further notice thereof shall be required.

DEFINITIONS

24. The phrase "close of escrow" as used herein refers to the date upon which the instruments are recorded in the County Recorder's Office vesting the Buyer's interest in accordance with these Escrow instructions.

25. The day provided for herein within which compliance with any requirement must be met shall end at the close of the then regularly established public business hours of Escrow Agent for such day; provided, should Escrow Agent be closed during any of said business hours of said day, such requirement may be met on the next succeeding day on which Escrow Agent is open for business.

TITLE INSURANCE

26. The title insurance provided for herein shall be subject to the conditions of and evidenced by the regular form of owner's title insurance policy of Ticor Title Insurance Company of California with a limit of liability equal to the total amount to be paid by Buyer.

27. NOTE: There are some matters which Ticor Title Insurance Company of California as Escrow Agent does not attempt to investigate or determine and for which it assumes no liability. While not a complete list, experience has shown that among these, the following deserve your particular consideration:

(A) Unrecorded mechanic's and materialmen's liens.
(B) Personal property taxes.
(C) Utility charges, such as electric, gas, water and sewer.
(D) Boundary lines, location of improvements and possessory rights.
(E) Compliance with limitations on use of the property, such as zoning and building and other restrictions.
(F) Premiums for fire insurance policies provided for herein.
(G) Proposed improvement assessments, not yet liens.
(H) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property as of the time of closing of the escrow.
(I) Usury in any loan involved in the escrow.

BOQUILLAS CATTLE COMPANY

By ______________________
Vice President SELLER

and by ______________________
Assistant Secretary SELLER

Date Signed [illegible]

KARL SOLOMON INVESTMENTS

By ______________________ BUYER

______________________ BUYER

Date Signed 9/12/83

7-2-87 STATEMENT

I Robert Pencall do recall the following as being a true statement concerning a conversation I had with Edison Woods Navajo Tribal Appraiser. On June 30, 1987 while waiting in the Council Chambers. I was sitting at a table with John Goodfellow, Dean Moss and Edison Wood. I was talking about the Big Boquillas Ranch purchase and was saying that the appraisal and review were insufficient. That I had written some of my doubts down on paper and wanted to know if the appraiser and reviewer had considered the points covered on that paper. I showed the paper to Edison. He studied the paper and said that he felt the price had been too high. He stated that he had felt the price should be about (I for get the figure it probably was $60.00 per acre). That he had come in with a lower figure and Ninibah Cahn had instructed him to increase the figure. I think he said he had a meno instructing him to do so.

On July 1 I called Edison to my office and told him that I had told Floyd Espinoza my supervisor about his statement and that what he had said could come out. I told him we were writing a retraction of our concurrence with his figure and that would be out as sonn as possible. Edison said he felt better and that he just could not stand to live with what had been done in regard to changing the appraisal. He said he would be glad if something came out on the appraisal.

Robert Pencall

FILE COPY
Surnames

Navajo Area Office
P.O. Box M
Window Rock, Arizona 86515-0714

ARPM/Appraisal Section

JUL - 2 1987

Mr. Peter MacDonald

Chairman, Navajo Tribal Council

Dear Mr. MacDonald:

According to brochures and information provided to licensed real estate agents in Arizona by the Tenneco Company of Bakersfield, California, the Big Boquillas Ranch has been offered for sale for the sum of $25 million dollars over the past two-three years.

Apparently, the Big Boquillas Ranch property has been optioned by Mr. Bud Brown, et al, who have offered to sell the property to the Navajo Tribe for $33.4 million dollars.

The significance of the above information is that the confirmed sale-option agreement of the subject Big Boquillas Ranch located near Seligman, Arizona, is the most recent and best comparable sale and measure of fair market value, that can be utilized for appraisal purposes of the subject property.

In view of this recent information the previously estimated market value of $68 per acre must be withdrawn and the $25 million dollars listing price used as the best obtainable estimate of value which is approximately $50.87 per surface acre.

Sincerely,

/s/ FLOYD E. ESPINOZA

[illegible]
Area Director

WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

PETER MacDONALD
CHAIRMAN, NAVAJO TRIBAL COUNCIL

JOHNNY R. THOMPSON
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

July 6, 1987

(for Saturday purpose)

— Rod Lewis – A.G. for Pima

— Valessy

CONFIDENTIAL: ATTORNEY-CLIENT INFORMATION

MEMORANDUM

TO: Peter MacDonald, Chairman
Navajo Tribal Council

Carl Rowan, Jr.
Milgram Thomajan & Lee

FROM: Michael P. Upshaw
Michael P. Upshaw, Attorney General
Navajo Nation Department of Justice

SUBJECT: BOQUILLAS RANCH PURCHASE

The July 2, 1987 draft of purchase agreement for the Ranch property appears to adequately handle most of the problems attendant to a land purchase of this nature but it does not handle the issues raised by the belated letter of advise from the BIA.

The BIA letter raises issues as to the identity of the seller, the fairness of the purchase price, and the adequacy of the prior advice provided to the Navajo Tribal Council at the time the transaction was approved (approximately April 30, 1987).

From reviewing various portions of prior and current drafts of pertinent papers, it appears that:

1. A preliminary title report was obtained on December 2, 1986, by someone, but no part of that

Peter MacDonald

title report seems to be available showing ownership as of that time.

2. Tenneco, either directly or through controlled entities, has had title to the property since 1926.

3. Within the last six months or so, Tenneco "optioned" or conditionally sold the property to Tracy Oil & Gas Company, a company that, according to public records available in Arizona in 1987, does not seem to have sufficient financial strength to be considered a "serious" buyer. Further, that a person named Byron ("Bud") Brown, and perhaps others, are part of a syndicate or group of partners that may be a part of the Tracy selling entity.

4. According to the BIA letter, the purchase price may have been escalated from $25 million to $33.5 million in a period of less than a year, which, if true, is a "flip." Such a quick change of ownership and price may not necessarily be illegal, but can mean a very bad bargain for the buyer.

5. There will be two deeds of trust (liens) on the property after the Tribe receives title -- one lien will be to protect the first seller (a Tenneco entity), and the other lien will be to protect Tracy, et. al. Unfortunately, it is unlikely that the face amount of the liens will be discovered prior to closing. After closing, if the BIA is correct, the first lien would reflect a first purchase price some $8 million less than the Tracy selling price.

6. Because $500,000 was already paid outside escrow as a non-refundable deposit, this money may be completely beyond recovery.

Given these circumstances, it would be appropriate to undertake one or more of the following:

1. Since a major part of the BIA is geographically beyond reach until after the scheduled closing date, attempt to extend the closing date by seven to ten days. This is not

[illegible]

a unreasonable request in the circumstances.

2. Simply put the issues raised by the BIA directly to Tracy-Duckworth for response.

3. Add one or more provisions to the purchase agreement such as:

A. Seller warrants and represents to Buyer that no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement, or to its knowledge is it in any way connected with any of such transactions. No persons or entities, other than the current shareholders of Tracy, are entitled, either directly or indirectly, to receive or benefit from the proceeds of this sale. The current shareholders of Tracy are ___________, ___________, ___________, ___________;

B. Prior to the closing date, Buyer shall have received a detailed appraisal of the Boquillas property at no cost or expense to the Buyer, dated as of a date between the date hereof and the closing date, prepared by an MAI appraiser, in a form reasonably satisfactory to the Buyer, showing the property to have a value of not less than $33,417,500. Seller shall pay the fees and expenses of such appraiser; or

C. It is understood that Seller is not the owner of the Boquillas property, but that it and ___________ has an interest therein as a purchaser under a contract dated February __, 1987, with Tenneco [or the appropriate subsidiary], which contract Seller believes to be valid and binding and has been exhibited to and read in its entirety by Buyer. In the event that such contract between the Seller and Tenneco is not closed within ____ days from the date of this Agreement, or if Seller

> does not obtain title to the property within such period, Seller shall return to Buyer all monies paid to it (or for its account in escrow), and the parties shall thereupon be mutually released from all other liability and responsibility under the contract.

The important focus here is to provide the client (Navajo Tribal Council) with adequate protection without unduly interfering with client's desire to acquire the property. It is unfortunate that the BIA was so late in making its comments known -- but now that it has gone on record, it is important to either disprove the BIA allegations.

cc: Rick Alrilch, Milgran, Thomajon & Lee
Mike McKenzie, Milgram, Thomajon & Lee
Don Wharton, Department of Justice

PROFITS DERIVED FROM THE SALE OF THE BIG BOQUILLAS RANCH

PRICE OF RANCH SOLD TO NAVAJOS:	$33,417,386.00
PRICE OF RANCH SOLD TO TRACY:	$26,250,000.00
PROFITS SUBTOTAL:	$ 7,167,000.00
BROWN COMMISSION:	$ 750,000.00
TOTAL PROFITS (NOT INCLUDING EXPENSES):	$ 7,917,386.00

DIVISION OF PROFITS ON THE SALE OF THE BIG BOQUILLAS RANCH

BROWN - 59% (NOT INCLUDING EXPENSES OR INTEREST INCOME)	$ 4,228,757.74
COMMISSION	$ 750,000.00
TOTAL:	$ 4,978,757.74
TRACY - 41% (NOT INCLUDING EXPENSES OR INTEREST INCOME)	$ 2,938,628.26

The following material is in sequential order. Hopefully it makes more sense that way.

The main points are the Boquillias was listed for 2 or 3 years for $25,000,000.00 and nobody bought it. So it maybe worth even less. Apparently there have been several escrows so the owners are anxious to sell. The fair market value should have been around $25,000,000.00. The appraisals at 34,000,000.00 are out of the range of forgivable error.

There may have been fraud involving Tribal personal.

JUN 26 1987

REVIEW OF THE BOQUILLAS RANCH MATERIALS.

I think we could have some problems on this one in the future because the price seems to me to be too high. I would hope you thought of all the stuff listed below. Think about the material and then lets talk about it.

1. Why were positive adjustments were used on comparable data in the appraisal when the appraisal contains statements that ranch prices have fallen 20 to 30% since 1980. On the sales that were adjusted by Edison the difference is between 27% and 36%.

2. If the sales were adjusted down in accordance with Edison's paragraph in his appraisal the difference in the indicated value would on average be less. That is between $9,000,000.00 and $12,000,000.00 less. That kind of money needs lots of justification and explaining.

3. The average returns on ranches vary from 2.5% to 3% the return here is 1.8% did anyone explain why the return was low. This indicates values differences of between $9,000,000.00 and $13,000,000.00.

4. The average price per A.U. was $2791 in 1985 why are we paying $3,288.00. The figure is based on 13,000 A.U. The difference is 15% or about $5,000,000.00.

5. Why does the State require 80.2 acres for an A.U. and the owner claim or somebody claims the carrying capacity is 13,000. If the States figures were true of all acreage the carrying capacity would be 6127 and the cost per A.U. would be $5,386.00. Were carrying capacities studied and the correct figures obtained? The difference here between the owners or others statement and the figure based on State carrying capacities would be 48% or $16,000,000.00.

6. If there are special commercial lands why weren't they valued.

7. Regarding the leased lands. They lease for $600,000.00x35%=$195,795.00 (income to the leased lands) -23072.60(cost of leasing the lands) = $172,722.96. Why does land that produces $172,722.96 per year have no value?

8. See comparable 3 240 X 75.68 = $775,000.00 That should have been picked up in the review.

9. Using one comparable for a review is very dangerous and when it involves another use such as coal mining it is poor judgement to use it with nothing else.

10. If leased lands do have value as demonstrated above how can the appraiser justify using comparable with as little as 20% fee with a purchase price of only $750,000.00 when our subject has a supposed value of $34,000,000.00 that is only 2% of the value and its got 80% leased land. That just can not be done.

11 Sale 4 is adjusted for a sale date of 1981 and the comparable is dated 1984 in Goodfellow's notes. That is the date shown on the spread sheet. Woods did adjust for 1984.

12. If the Zah people or McDonald people want B.I.A. BLOOD and we want to defend ourselves we have to be able to explain this stuff. Do you feel comfortable or should we change our analysis?

#1052- A18

AGREEMENT

ANY INCOME DERIVED FROM THE SALE OF THE BOQUILLAS CATTLE COMPANY RANCH WILL BE SPLIT 2/3 TO BRYON T. "BUD" BROWN AND 1/3 TO TOM TRACY.

FOR THIS PURPOSE "INCOME" IS DEFINED AS THE NET PROFITS BEFORE INCOME TAXES.

THE INCOME WILL BE DISTRIBUTED AS RECEIVED.

THIS AGREEMENT FOR DIVISION OF INCOME APPLIES WHETHER THE PURCHASE AND SALE IS HANDLED BY US AS A CORPORATION, PARTNERSHIP, OR JOINT VENTURE.

DATED THIS 20TH DAY OF FEBRUARY, 1987, IN PHOENIX, ARIZONA.

BYRON T. "BUD" BROWN

Tom Tracy

TOM TRACY

"B"

#10 A30

Agreement 7-8-87

Parties:

Reppel Steel + Supply Co, Inc ("Reppel")
and

Byron T. Brown ("Brown")

Subject Matter:

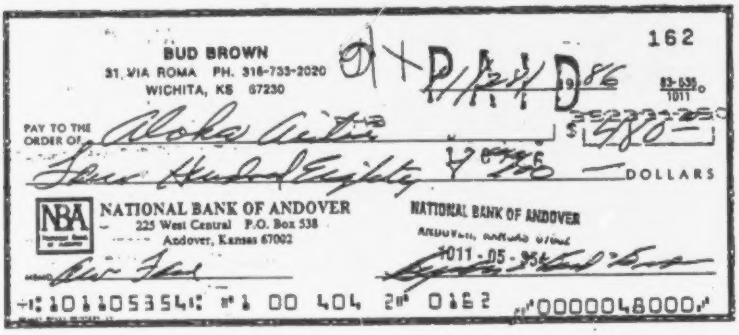
Sale Big Boquillas Ranch
Tracy Oil + Gas Co. dba Big
Boquillas Ranch to Navajo
Tribe of Indians

Split of Expenses
59% Brown
41% Tracy

Split of Net Proceeds
59% Brown
41% Tracy

Tom Tracy
T. Tracy

Byron T. Brown
Byron T. Brown



162

BUD BROWN
31 VIA ROMA PH. 316-733-2020
WICHITA, KS 67230

PAID 19 86

83-535/1011

PAY TO THE ORDER OF Aloha Airlines $ 480—

Four Hundred Eighty —— DOLLARS

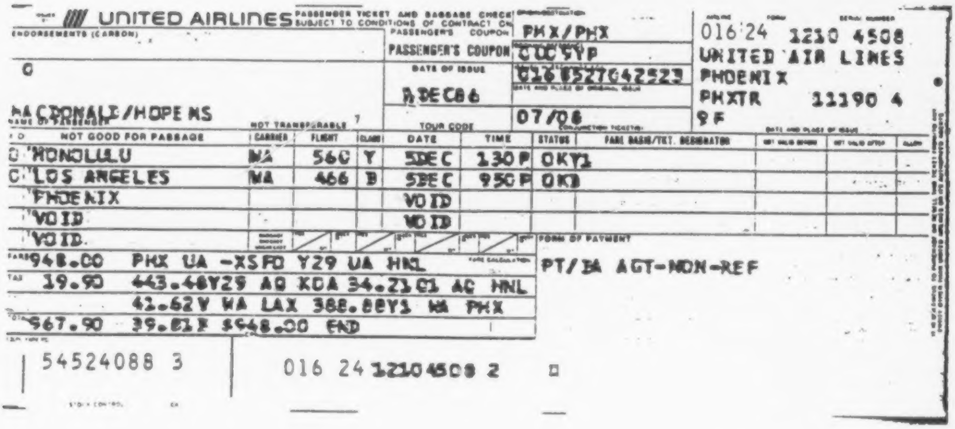
NBA NATIONAL BANK OF ANDOVER
225 West Central P.O. Box 538
Andover, Kansas 67002

NATIONAL BANK OF ANDOVER
ANDOVER, KANSAS 67002
1011-05-354

MEMO Air Fare

Bud Brown

⑆101105354⑆ ⑈1 00 404 2⑈ 0162 ⑈0000048000⑈



UNITED AIRLINES PASSENGER TICKET AND BAGGAGE CHECK SUBJECT TO CONDITIONS OF CONTRACT ON PASSENGER'S COUPON

PASSENGER'S COUPON

ENDORSEMENTS (CARBON)

O

PHX/PHX
CUC5YP
0165527042523

DATE OF ISSUE 5DEC86

07/08

TOUR CODE

016 24 1210 4508
UNITED AIR LINES
PHOENIX
PHXTR 11190 4
9F

NAME OF PASSENGER MACDONALD/HOPE MS NOT TRANSFERABLE

	NOT GOOD FOR PASSAGE	CARRIER	FLIGHT	CLASS	DATE	TIME	STATUS
O	HONOLULU	WA	560	Y	5DEC	130P	OKY1
C	LOS ANGELES	WA	466	B	5DEC	950P	OKB
	PHOENIX				VOID		
	VOID				VOID		
	VOID.						

FARE 948.00 PHX UA -XSFO Y29 UA HNL
TAX 19.90 443.46Y29 AQ KOA 34.21C1 AC HNL
41.62Y WA LAX 388.88Y1 WA PHX
TOTAL 967.90 39.81F $948.00 END

FORM OF PAYMENT PT/IA AGT-NON-REF

54524088 3

016 24 1210 4508 2 □

AlohaAirlines

VALIDATED BY

YF-6

NAME OF PASSENGER/GROUP: BROWN [illegible]

DATE: 11/25/88

FORM OF PAYMENT:

☐ CASH ☒ CHECK ☐ CHARGE

ACCT NO.:

AUTHORIZING SALES REP.: K7

NUMBER AUDITOR'S COUPON BEING REMITTED FOR:

NO. BOOKS

FARE

TAX

LESS COMM.

TOTAL $

FARE

TAX

LESS COMM

TOTAL 240^{00}

OF TF-1128607

	AIRLINE	FORM	SERIAL	CK
AUDITOR'S COUPON	327	3005	018287	5

AlohaAirlines

VALIDATED E

YF-6

NAME OF PASSENGER/GROUP: MCDONALD [illegible]

DATE: 11/25/88

FORM OF PAYMENT:

☐ CASH ☑ CHECK ☐ CHARGE

ACCT NO.:

AUTHORIZING SALES REP.: K7

NUMBER AUDITOR'S COUPON BEING REMITTED FOR:

NO. BOOKS

FARE

TAX

LESS COMM.

TOTAL $

FARE

TAX

LESS COMM

TOTAL 240^{00}

	AIRLINE	FORM	SERIAL	CK
AUDITOR'S COUPON	327	3005	018288	6

Sale of 2 YF-6 Coupon Books $480.00

Date of Sale 11/28/88 Form of Payment - check

FT011I

FT INCOMING MSG

United New Mexico Bank at Albuquerque 110919

Account Number
900000440

Prepared By
e.gnioa

Approved By

C. TARAMINO

107000932 1000

122100024 - 0557 $25,000.00

VALLEY PHNX/ REPPEL STEEL & SUPPLY CO

UNITED NM ALBQ/ UNITED NM BK GALLUP NM

REED BROWN/ FFC PETER MCDONALD ATTN: LONNIE HAMILTON

0224 80000440 02-24-87 00140023

02241509*

0224 LLV88 557 02241514 0224 JVW76 42 02241509 FT1J

⑆107000932⑆ 900000440⑈ 01 ⑇0002500000⑇

CREDIT TO PROOF

Valley National Bank of Arizona

WIRE TRANSFER ORDER

☐ SPECIAL NOTIFICATION CODE 12

TEST	Out-going	In-coming	DATE	TIME	Branch No.	Sec. Code

EMPLOYEE NAME

BANK OR BRANCH NAME

ROUTING NUMBER	$ AMOUNT OF TSF	BY ORDER (NAME)	ACCOUNT NUMBER
	25,000.00	Reppel Steel & Supply Co.	100-7386

BAR SPACE

RECEIVING BANK/SENDING	ADDRESS
United New Mexico Bank	Gallup, New Mexico

RECEIVING PARTY (CR OR PAY)	ACCOUNT NUMBER
Bud Brown for credit to Peter MacDonald	—

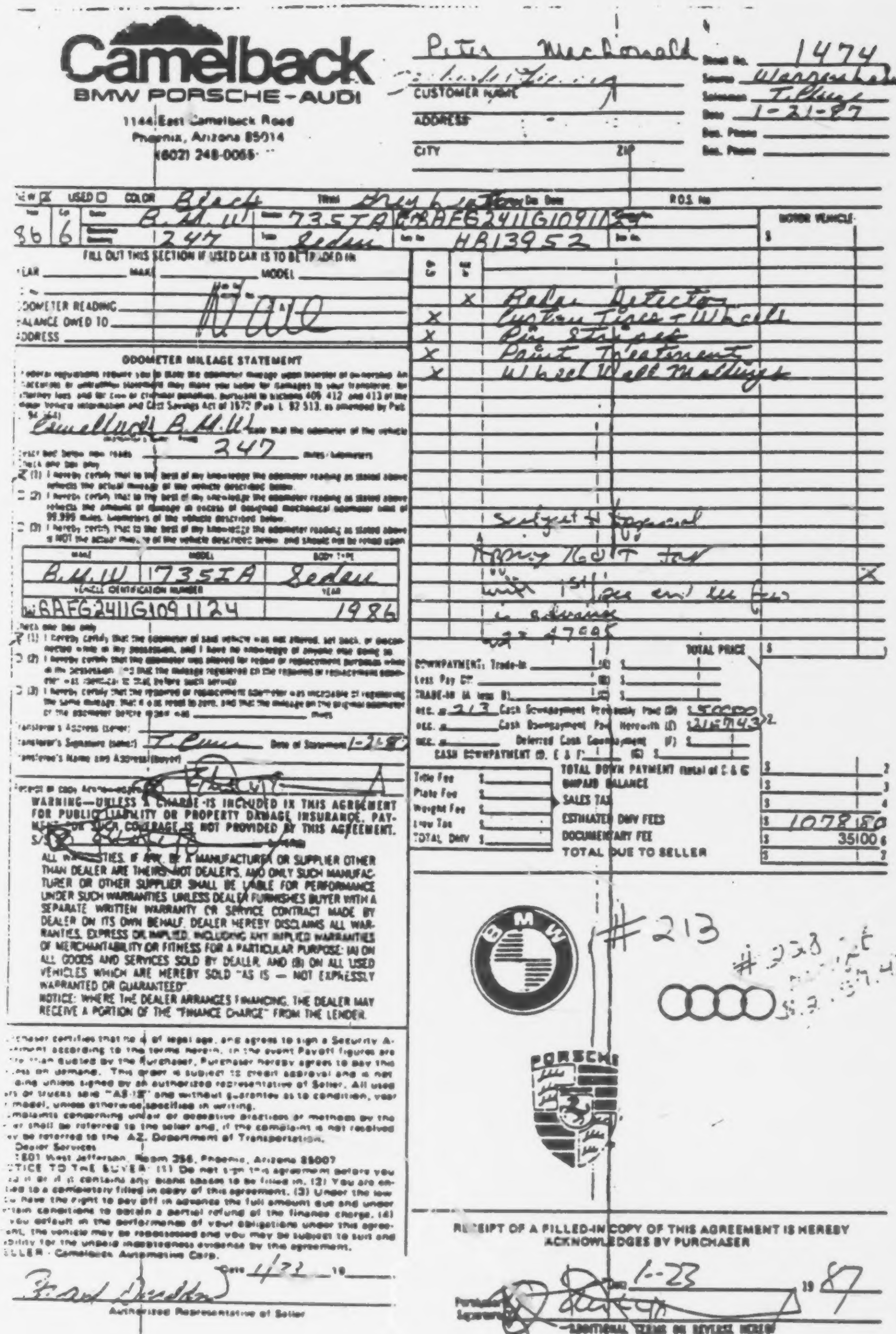
OTHER (E.G. SPECIAL INSTRUCTIONS)

ATTENTION: LONNIE HAMILTON

[illegible]	[illegible]	ANALYSIS

37-6026 REV. 6-81

Signature



Camelback
BMW PORSCHE-AUDI
1144 East Camelback Road
Phoenix, Arizona 85014
(602) 248-0065

Peter McDonald
[illegible]
CUSTOMER NAME
ADDRESS
CITY ZIP

Stock No. 1474
Source [illegible]
Salesman T. [illegible]
Date 1-21-87
Res. Phone
Bus. Phone

NEW ☒ USED ☐ COLOR Black TRIM Grey Leather Delivery Date R.O.S. No.

Year 86 Cyl. 6 Make B.M.W. Model 735IA Serial No. WBAFG2411G10911[illegible]

Odometer Reading 247 Type Sedan Key No. HB13952 Key No.

FILL OUT THIS SECTION IF USED CAR IS TO BE TRADED IN
YEAR MAKE MODEL
ID No.
ODOMETER READING
BALANCE OWED TO
ADDRESS
None

	X	Radar Detector	
X		Custom Tires + Wheels	
X		Pin Stripes	
X		Paint Treatment	
X		Wheel Well Moldings	
		Subject to Approval	
		Appraisal 760 T [illegible]	
		with 1st [illegible] and lic fees	X
		in advance	
		$47,095	
		TOTAL PRICE	$

MOTOR VEHICLE $

ODOMETER MILEAGE STATEMENT

Federal regulations require you to state the odometer mileage upon transfer of ownership. An inaccurate or untruthful statement may make you liable for damages to your transferee, for attorney fees, and for civil or criminal penalties, pursuant to sections 409, 412, and 413 of the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. 92-513, as amended by Pub. L. 94-364).

I, Camelback B.M.W. (transferor's name, print), state that the odometer of the vehicle described below now reads 347 miles/kilometers.

Check one box only.

☒ (1) I hereby certify that to the best of my knowledge the odometer reading as stated above reflects the actual mileage of the vehicle described below.

☐ (2) I hereby certify that to the best of my knowledge the odometer reading as stated above reflects the amount of mileage in excess of designed mechanical odometer limit of 99,999 miles/kilometers of the vehicle described below.

☐ (3) I hereby certify that to the best of my knowledge the odometer reading as stated above is NOT the actual mileage of the vehicle described below and should not be relied upon.

MAKE	MODEL	BODY TYPE
B.M.W.	735IA	Sedan
VEHICLE IDENTIFICATION NUMBER		YEAR
WBAFG2411G1091124		1986

Check one box only.

☒ (1) I hereby certify that the odometer of said vehicle was not altered, set back, or disconnected while in my possession, and I have no knowledge of anyone else doing so.

☐ (2) I hereby certify that the odometer was altered for repair or replacement purposes while in my possession, and that the mileage registered on the repaired or replacement odometer was identical to that before such service.

☐ (3) I hereby certify that the repaired or replacement odometer was incapable of registering the same mileage, that it was reset to zero, and that the mileage on the original odometer or the odometer before repair was ______ miles.

Transferor's Address (Seller):
Transferor's Signature (Seller) T. [illegible] Date of Statement 1-21-87
Transferee's Name and Address (Buyer)
Receipt of copy Acknowledged

WARNING—UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.
S/

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER'S, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES UNLESS DEALER FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF. DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE: (A) ON ALL GOODS AND SERVICES SOLD BY DEALER, AND (B) ON ALL USED VEHICLES WHICH ARE HEREBY SOLD "AS IS — NOT EXPRESSLY WARRANTED OR GUARANTEED".

NOTICE: WHERE THE DEALER ARRANGES FINANCING, THE DEALER MAY RECEIVE A PORTION OF THE "FINANCE CHARGE" FROM THE LENDER.

DOWNPAYMENT: Trade-In ______ (A) $
Less Pay Off ______ (B) $
TRADE-IN (A less B) ______ (C) $
REC. # 213 Cash Downpayment Previously Paid (D) $5,000.00
REC. # ______ Cash Downpayment Paid Herewith (E) $21,657.43
REC. # ______ Deferred Cash Downpayment (F) $
CASH DOWNPAYMENT (D, E & F) (G) $

Title Fee	$
Plate Fee	$
Weight Fee	$
Lieu Tax	$
TOTAL DMV	$

TOTAL DOWN PAYMENT (total of C & G)	$	2
UNPAID BALANCE	$	3
SALES TAX	$	4
ESTIMATED DMV FEES	$ 1078.80	5
DOCUMENTARY FEE	$ 351.00	6
TOTAL DUE TO SELLER	$	7

#213

#228 [illegible]
$21,657.43

Purchaser certifies that he is of legal age, and agrees to sign a Security Agreement according to the terms herein. In the event Payoff figures are more than quoted by the Purchaser, Purchaser hereby agrees to pay the difference on demand. This order is subject to credit approval and is not binding unless signed by an authorized representative of Seller. All used cars or trucks sold "AS IS" and without guarantee as to condition, year or model, unless otherwise specified in writing.

Complaints concerning unfair or deceptive practices or methods by the dealer shall be referred to the seller and, if the complaint is not resolved, may be referred to the AZ. Department of Transportation,
Dealer Services
1801 West Jefferson, Room 356, Phoenix, Arizona 85007

NOTICE TO THE BUYER: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled in copy of this agreement. (3) Under the law you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by the agreement.

SELLER - Camelback Automotive Corp.

Date 1/22 19____

Authorized Representative of Seller

RECEIPT OF A FILLED-IN COPY OF THIS AGREEMENT IS HEREBY ACKNOWLEDGES BY PURCHASER

Purchaser Signature Date 1-23 19 87

ADDITIONAL TERMS ON REVERSE HEREOF

CONSUMER APPLICATION

BMW Credit Corporation

☒ Personal or Family Purposes ☐ Business, Commercial or Agricultural Purposes

Applicant: ☒ Married ☐ Separated ☐ Unmarried

Joint Applicant: ☐ Married ☐ Separated ☐ Unmarried

CLE INFORMATION

☐ "Flexible Loan" ☒ Long Term Lease ☐ Lease Assumption

Camelback B.M.W.

2480055 Linda 8 B.M.W 6-7

60

ASE INFORMATION

TAIL INSTALLMENT INFORMATION

INFORMATION REGARDING APPLICANT

eter MacDonald Sr.

12 16 /28

523 - 28 - 8010

40 20 36 14

602/871- 526-4191 or

P. O. Box 2350 Window Rock, AZ 86515

86515 20 20

404 N. Elk Run; Flagstaff, AZ 86001

86001 3

602/526-4191

elf

Elec. Engr.

Consultant

P. O. Box 3513; Flagstaff, AZ 86003

60,000.00

Consulting Elec. Engr.

Interact Engineering; Philadelphia, PA 215/068-8808 3

ron T. "Bud" Brown;

INFORMATION REGARDING JOINT APPLICANT, SPOUSE OR OTHER PERSONS

☐ Yes ☐ No

FINANCIAL INFORMATION — ALL LOANS, LEASES AND OTHER OBLIGATIONS (INCLUDING ALIMONY, CHILD SUPPORT, MAINTENANCE)

☒ Buying or Own

Mora Bank 0000000163065 approx. 1,695

P. O. Box 52047; Phoenix, AZ 85072

rst Interstate Bank; Box 2983; Phoenix, AZ 85062 406.50

tibank; Box 33109; Phoenix, AZ 85067 351.00

☒ Purchased GMAC; Phoenix, AZ

United/Mt. Elden/Flag 602/6602

United Mt. Elden/Flag

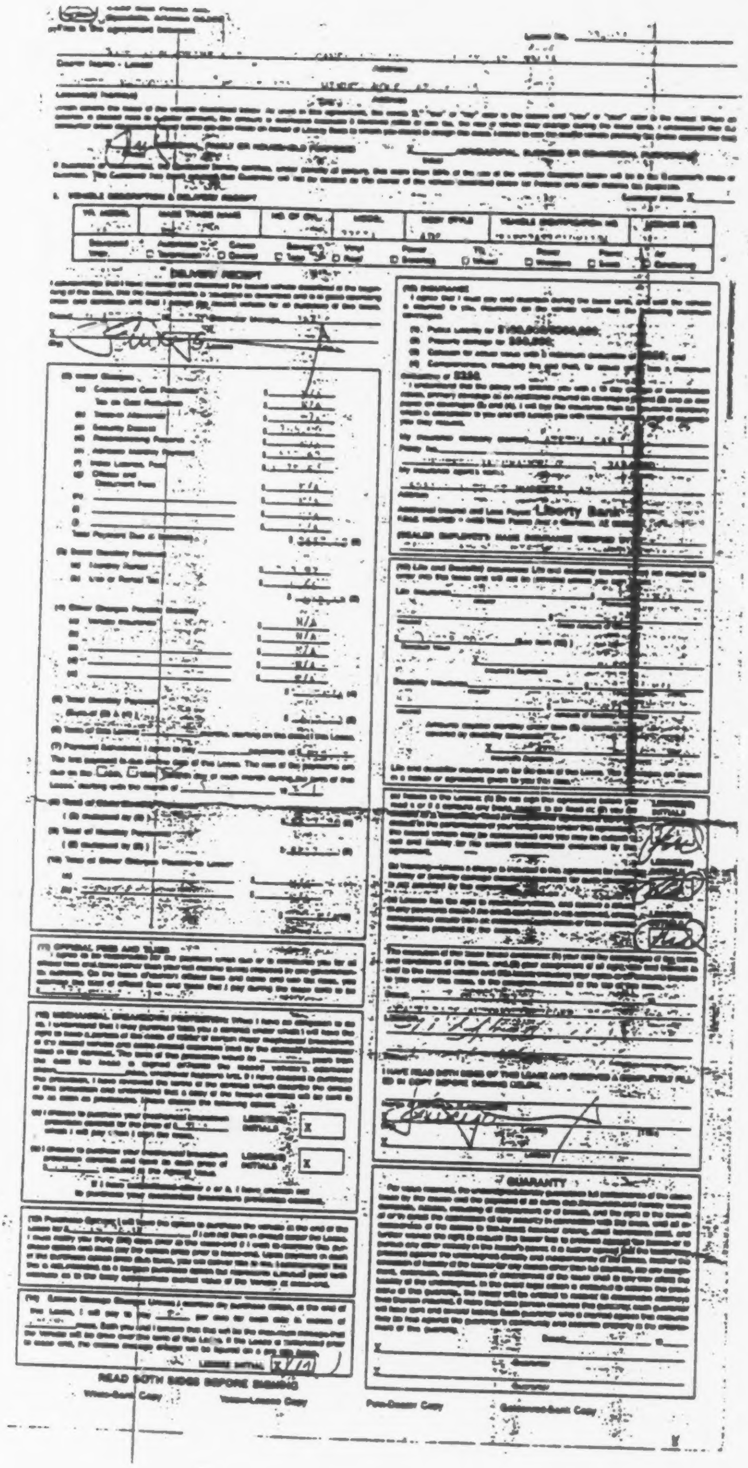
☒ No

☒ No

FOLLOWING DRIVER INFORMATION IS NOT REQUIRED IF APPLICATION IS BEING MADE FOR RETAIL-INSTALLMENT CREDIT OR "FLEXIBLE LOAN" CREDIT.

OPERATORS IN ORDER OF MOST FREQUENT USE

Peter MacDonald 100 12 16 28 AZ 20



DELIVERY RECEIPT

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

Liberty Bank

X

X

GUARANTY

X

X

READ BOTH SIDES BEFORE SIGNING

1218.1
A26

PROMISSORY NOTE

$ 25,000.00

January ______, 1987
Phoenix, Arizona

UPON DEMAND BY BYRON T. BROWN (hereinafter "Note-Holder"), at any time after the execution of this note, the undersigned, Peter Mac Donald, Jr., (hereinafter "Borrower") promises to pay to Note-Holder, or order, the principal sum of $ 25,000.00 dollars, together with interest on the unpaid principal balance from the date this note is executed, the actual commencement date of this note, until paid, at the rate of ten (10%) per cent per annum. Principal and interest shall be payable IN FULL UPON DEMAND BY NOTE-HOLDER, at such place as Note-Holder may designate upon notice to Borrower.

Demand by Note-Holder shall be by written notice to Borrower and such notice shall not be less than thirty (30) days from the date such notice is mailed. If suit is brought to collect this note, Note-Holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorneys' fees.

Borrower may prepay the principal amount outstanding in whole or in part without penalty. Any partial prepayment shall be applied against the principal amount outstanding but shall not waive any rights of the Note-Holder to DEMAND PAYMENT IN FULL UPON DUE NOTICE, unless Note-Holder agrees in writing to waive such right.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors, and endorsers hereof. This note shall not be the joint and several obligation of all makers, sureties, guarantors, and endorsers and shall not be binding upon their successors and assigns. This note shall be the sole responsibility of the makers.

Any notices provided for in this note shall be given by mailing such notices by certified mail, return receipt requested, addressed to Borrower or Note-Holder, at their respective addresses, or such other addresses as they may designate by notice to each other.

The indebtedness evidence hereby shall be payable in lawful money of the United States.

Dated:

By____________________________
Byron T. Brown
NOTE-HOLDER

Dated: Jan 14, 1987

By____________________________
Peter Mac Donald, Jr.
BORROWER

#2767.1
A 27

CONSULTING AGREEMENT

AGREEMENT dated January 1, 1988 between BUD BROWN ENTERPRISES (the "Company"), and ROMAC ENTERPRISES, INC. (the "Consultant").

1. Employment. The Company employs the Consultant and the Consultant accepts employment upon the terms and conditions of this agreement.

2. Term. The term of this agreement shall begin on January 1, 1988, and shall terminate on December 31, 1988.

3. Compensation. For all services rendered by the Consultant, the Company shall pay the Consultant a fee in the amount of $ 5,500.00 per month. At the option of either party to this agreement, fees may be paid in a lump sum payment at a time and place designated by either party, by either oral or written notice, without penalty.

4. Duties. The Consultant is engaged as a general consultant, to assist and provide legal support and expertise on all matters called upon by Company, and other such related duties as the Company may request.

5. Expenses. The Consultant may incur reasonable expenses for promoting the Company's business, including but not limited to, expenses for entertainment, travel, and similar items. The Company will reimburse the Consultant for all such expenses.

6. Termination without cause. Without cause, the Company may terminate this Agreement at any time upon two weeks written notice to Consultant at Consultant's business address. In such event, the Consultant, if requested by the Company, shall continue to render his services, and shall be paid his regular compensation up to the date of termination. Without cause, the Consultant may terminate the Agreement upon two weeks written notice to the Company at the Company's business address. In such event, the Consultant shall continue to render his services and shall be paid his regular compensation up to the date of termination.

7. Assignment. The Consultant acknowledges that the services to be rendered by him are unique and personal. Accordingly, the Consultant may not assign any of his rights or delegate any of his duties or obligations under the Agreement.

8. Relationship between parties. Consultant is retained and employed by the Company only for the purposes and to the extent set forth in this Agreement. The Consultant's relation

to the Company shall, during the period of this Agreement, and services rendered thereunder, be that of an independent contractor. The Company shall be held harmless for any acts of the Consultant. Further, the Consultant shall hold the Company harmless for any liability whatsoever.

9. Entire agreement. This Agreement contains the entire understanding of the parties. The Agreement may be modified by written agreement signed by both parties.

In witness whereof, the parties have executed this Agreement on January ________, 1988.

Peter Mac Donald, Jr.	Byron T. Brown
President	President
ROMAC ENTERPRISES, INC.	BUD BROWN ENTERPRISES

5-26-87

Big B

3-2	Cash	([illegible])	4,000 ✓
3-3	FD		5000 ✓
[3-10	BB		900 ✓]
3-18	–		5000 ✓
3-26	FD		5000 ✓
[–	BB		900 ✓]
4-2	FD		5000 ✓
4-10	T [illegible]	comm BB ch	20 000 ✓
–	FD		5000 ✓
4-24	–		5000 ✓
4-27	BB	exp's @ Hwy · BB Ranch	3000 ✓
–	Ticor		250,000 ↓
5-8	FD		5000 ✓
2-24	BB		5000 ✓
2-16	Ticor		100,000 ↓
3-13	BB	(Vegas)	1500 ✓ WES
5-~~26~~ 27	~~Dunn~~	FD	~~9,136~~ 8,946 ✓
2-24	To	N.M. banker	25,000 ✓
			454,~~436~~ 246
5-26	BB		50,000 ✓
			504,~~436~~ 246
6-10	FD		7,653 ✓
5-29	T – airplane rent		20,000 ✓
6-1	Farm [illegible]		141 ✓
–	Chevron		679 ✓
6-5	BD		5000 ✓
6-8	BB – [illegible] Tour ride		5500 ✓
6-29	FD		625~ ✓
1-15	Bud		3000 ✓
4-7	Ticor		500 ✓
6-26	Bud		10,000 ✓
7-1	Chevron		1370
2-18	Az Corp Comm		10
6-3~	Farm		66
			564,417

TM	BD	FD	other
4000	5000	5000	3000
[900	20,000	5000	250,000
900]	5000	5000	100,000
25000		5000	1500
		5000	
		5000	
		8,946	
		~~9,136~~	
30,800	30,000	38,946	354,50
	50,000	~~39,136~~	20,00
	5,000	7,653	14
	5,500	6,25~	67

Big B Expenses

7-9-87

1987			Ck #	WES	RS
2/19 ✓	Ar Cong Comm. -	res. name	3976	10 -	
3/13 ✓	Bud	- Vegas	3983	1500 -	
4/22	Farm	- Exp's	3987	66.16	
[1-15 ✓	Bud	Car	19954 ✓		3000 -]
2-24 ✓	〃		19996 ✓		5000 -
3-2 ✓	Carl - Bud - [redacted]		20005		4000 -
3-3 ✓	7k		20008		5000 -
[3-10 ✓	Bud	Car	20016 ✓		900 -]
3-18 ✓	〃		20019 ✓		5000 -
3-26 ✓	7k		20031		5000 -
[3-26 ✓	Bud	Car	20032 ✓		900 -]
4-2 ✓	7k		20139		5,000 -
4-7 ✓	Ticor		20041		500
4-10 ✓	KTT (to cover KTT ck & Bud)		20046		20,000
ww — ✓	7k		20049		5000
4-24 ✓	7k		20056		5000
4-27 ✓	Bud	Little Amer. - CO's + Bus exp's @ Flag + Ranch	57 ✓		3000
5-8 ✓	7k		67		5000 -
5-26 ✓	Bud		76 ✓		50,000 -
5-27 ✓	7k		78		8946 -
5-28 ✓	Tom T - airplane	Fuel 3,000	80		20,000 -
6-1 ✓	Farm		85		141.41
〃 ✓	Chevron		88		679.11
6-5 ✓	Bud		90 ✓		5,000 -
6-8 ✓	〃	Ben 3Q	91 ✓		5,500 -
6-10 ✓	7k		95		7,653.81

{ 7-10 Ben TT Cut t 3,00

1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
JAN 9 1989
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

SENATE SELECT COMMITTEE ON
INDIAN AFFAIRS

The United States Senate
Washington, D.C. 20510,

Applicant.

Misc. No. 89-0007

ORDER

Upon consideration of the application by the Senate Select Committee on Indian Affairs, and upon determining that the procedural requirements set forth in 18 U.S.C. § 6005 have been satisfied, it is, this 9th day of January, 1989,

ORDERED That Peter MacDonald, Jr. may not refuse to testify, and provide other information, at proceedings of the Special Committee on Investigations of the Senate Select Committee on Indian Affairs, on the basis of his privilege against self-incrimination, and it is

FURTHER ORDERED That no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against Peter MacDonald, Jr. in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

Aubrey E. Robinson, Jr.
Chief Judge

United States District Court
for the District of Columbia
A TRUE COPY

JAMES F. DAVEY, CLERK,
By Linda L Romero
Deputy Clerk

William A. Riordan, Esq.
Assistant Attorney General
Navajo Nation Department of Justice

Wilbert Pioche
Deputy Director
Division of Administration and Finance

REPORT AND/RESPONSE OF NAVAJO NATION TO TESTIMONY OF DREX HANSEN AT SENATE SUBCOMMITTEE HEARINGS ON FEBRUARY 6, 1989

Prior to May, 1981, I had never met nor have I since had any other dealings or relationship in any capacity with either Mr. MACDONALD or Mr. ZAH, other than in the official course and scope of my assigned legal duties. Since May, 1981, I have been continuously employed as senior staff attorney for the Navajo Tribe for nearly eight (8) years and including administrations of both chairmen, Mr. MACDONALD and Mr. ZAH. To the extent which Mr. HANSEN'S gratuitous sworn testimony that Mr. RIORDAN is "a personal friend of the Chairman" implies any such personal business or social relationship with either gentleman, this is absolutely false and unfounded. My efforts have always been to provide legal services on behalf of the best interests of my clients, who have remained the same throughout my tenure; the people and government of the Navajo Nation.

I had only one prior occasion to meet or speak with Mr. DREX HANSEN, besides the meeting which was arranged on March 6, 1988 between himself and Mr. WILLIAM MORGAN and Mr. WILBERT PIOCHE, Executive Director and Deputy Director of the Navajo Division of Administration and Finance respectively, to attempt settlement of Mr. HANSEN's imminent lawsuit and disputed invoice account for reimbursement of services and expenses allegedly incurred in connection with "brokering" sales and purchases of Navajo Tribal aircraft.

Approximately one (1) year before the Houston meeting, I was asked to attend a discussion in Dallas pertaining to Mr. HANSEN's proposal for the Navajo Tribe to "bankroll" and provide all facilities to accomplish his scheme for repurchase, modification and resale of approximately 100 aircraft annually, which had been decertified for nonconformity with FAA flight specifications; and for division of any profits realized (not losses incurred) therefrom. This prior discussion involved various representatives of AMERICAN WEST AIRCRAFT CO., including DREX HANSEN; AMERICAN INDIAN CONSULTANTS and NAVAJO NATION Division of Administration and Finance Division and [illegible]DO Office. My assigned duties included provision of legal advice to the Navajo Division of Administration and Finance, which in turn administers the Navajo Nation Air Transportation Department. When I questioned why- the original manufacturer would not themselves have undertaken such modifications were it as technically and economically feasible as Mr. HANSEN asserted; why he required the tribe's complete commitment prior to recertification by FAA of modified prototype aircraft; and the generally disproportionate risk and profit sharing involved; and when I recommended prior independent economic analysis and aeronautical engineering evaluations on behalf [illegible] the tribe, it was my distinct impression that I was not on Mr. HANSE[illegible] of favorite acquaintances.

In any event, I was not requested to participate in any further consultation regarding that project (which has never materialized after such independent analyses). Nor was I involved in any manner regarding Mr. HANSEN's purported authorizations or offers to sell or buy any tribal aircraft, until the meeting on March 6, 1988, in response to Mr. HANSEN's threat of eminent lawsuit against the Navajo Nation.

Since I had absolutely no prior personal knowledge of the terms or negotiations regarding Mr. HANSEN's alleged services or expenses, I had to rely upon information presented upon my arrival at the Houston, Texas air terminal on March 6, 1988. I then learned that a previous agreement had apparently been signed for the purchase of a Lear 36, Serial 12 aircraft from or through Mr. HANSEN. It was also the position of tribal officials that while certain of Mr. HANSEN's expenses were authorized as incurred in connection with locating substitute aircraft for purchase by the Tribe, Mr. HANSEN was unable to offer the Lear aircraft for purchase free and clear of an IRS lien, and that he was therefore not entitled to reimbursement [illegible] the "demonstration" flights of that aircraft as listed on his invoice. Tribal officials also denied authorizing the additional charges which Mr. HANSEN claimed were incurred by him to keep another Lear aircraft "off the market" pending the tribe's decision regarding purchase.

Invoiced expenses totalling approximately $18[illegible].00 were acknowledged as authorized by tribal officials as the basis for their initial settlement offer, with credits for previous wire transfers totalling $69,230, for demonstration flights and a refundable deposit of $30,000 toward the aborted Lear aircraft purchase.

HANSEN's invoice deducts as a "credit," the tribe's previous wire transfer of $44,900 paid to him on June 25, 1987, which tribal officials have identified as including the "refundable deposit" of $30,000 together with $14,900 invoiced among the demonstration flights of that Lear aircraft. Mr. MORGAN believes that these credits are what Mr. HANSEN and the subcommittee counsel referred to at the hearing as an "advance kickback" of $45,000.00 allegedly requested by Mr. MORGAN.

Tribal officials rejected Mr. HANSEN's invoiced balance of $89,269,48 and Mr. HANSEN stated the most he would deduct from his demand was $25,000 which he related to the charge for the "Interest" he claimed to have paid for keeping the other Lear aircraft "off-market", pending the tribe's final purchase decision.

When Tribal officials sought to exclude other items from the invoice, Mr. HANSEN then became quite strident, stood up at his desk and threatened that unless all of his out of pocket expenses w[illegible]d, he would not only give his attorneys immediate instructions to fi[illegible] he would further call two (2) F.B.I. officials who had previously [illegible]ed him and tell them all he knew regarding the publicized investigati[illegible] were in progress regarding the Tribe's previous purchase of the Big Boquillas Ranch and other matters. Before Mr. HANSEN went further, I strongly objected to his apparent attempt to influence the aircraft negotiations in this manner, cautioned him about the seriousness of such accusations and told him there would be no further negotiations if he continued to attempt to inject them. He made no detailed references to such matters in my presence or at that meeting. Moreover, Mr. HANSEN's testimony that he "believed" that I announced any agreement on behalf of the Navajo Nation is also absolutely false and unfounded. Instead, I made it clear to all parties in Mr. HANSEN's office that I was not authorized to extend approval or concur with Division of Administration and Finance's agreement to any compromise settlement proposal regarding Mr. HANSEN's threatened lawsuit, which HANSEN testified Tribal officials wanted to pay so they would "not to have to bother with Mr. HANSEN any more."

With that clear understanding, Mr. MORGAN and Mr. HANSEN then announced their desire to submit a proposed settlement and release for final approval by the Budget and Finance Committee of the Navajo Tribal Council. Mr. HANSEN on his own wordprocessor, thereupon changed my signature line on his proposed agreement from "Concurred" to "Witnessed" and further added that his release of any and all claims was expressly conditioned upon final tribal approval by March 11, 1988. Mr. MORGAN has stated that payment has since been made to HANSEN with proper tribal approval, and the matter resolved.

I was present when the Budget and Finance Committee affirmed the settlement as part of a credit financing agreement approved by Resolution BFAU-122-88, on August 19, 1988. Apart from the specific expenses on Mr. HANSEN's invoiced claim, the Budget and Finance Committee determined that obtaining his release of any and all other claims, regarding all sales and purchase authorizations regarding the two King Air aircraft which Mr. HANSEN testified he offered to the tribe for $3,250,000, appeared in retrospect to have been a wise decision by the Administration and Finance Director.

Official documents including Closing Statements issued through the designated escrow service, Insured Aircraft Title Service, Inc. and purchase agreements from Piedmont Aviation Co. and Gulfstream Land and Development Co., Inc. respectively, clearly establish that the Tribe was able to directly purchase for $3,055,000 the two (2) King Air aircraft which Mr. HANSEN swore to be were the "identical" aircraft he had previously offered to the tribe for $3,250,000, or $195,000 less than Mr. HANSEN's offer!

Moreover, when the Tribe also recovered the full balance on the lease purchase of its original King Air, which had been obtained during the administration of former Chairman Peterson ZAH, the Tribe thereby recouped a previous loss of $80,000, incurred when the tribe had been defrauded of its initial "deposit" in that prior transaction.

Moreover, documented evidence confirms that the Division of Administration and Finance officials also determined yet another offer from Mr. HANSEN to obtain two (2) different King Air aircraft for tribal purchase was also at least $195,000 in excess of the direct sale market price.

In summary, by a compromise settlement of $64,269.48, the Navajo Nation obtained its release from any further "bother" with any or all of Mr. HANSEN's related claims or lawsuits for "brokering" the sale or purchase of any tribal aircraft, resulting in savings and recoupments exceeding $270,000. and avoided "padding" the selling prices for payments "to parties entitled to commissions" as Mr. HANSEN himself admitted advising Tribal officials.

Full documentation also disproves and discredits Mr. HANSEN's sworn testimony that to his "personal knowledge" and his personal inspection of sales invoices, the tribe paid $500,000 more than his sworn offer to sell "identical" King Air aircraft to the Tribe for $3,250,000 and his solicited and undisguised conclusion and opinion that this alleged "overpayment" also reflected illegal "kickbacks". On the contrary, the conclusion is obvious that the tribal Division of Administration and Finance thereby avoided payment of additional fees of nearly $100,000 per aircraft for Mr. HANSEN's "services".

Moreover, these documents further demonstrate how seriously and unjustifiably the commercial credit and reputation of the Navajo tribal government, as well as the personal name and professional reputations of Navajo officials have been compromised, by the presentation of Mr. HANSEN's false and misleading testimony without any apparent prior independent investigation by or on behalf or the subcommittee.

The Navajo Nation is entitled to the inclusion of these facts and documents in the record of these hearings. To allow Mr. HANSEN's discredited allegations to remain unrefuted in light of this evidence would not only breach all principles of fairness and fundamental due process of law; it would further breach the federal trust obligation to protect Indian Tribal governments, to allow their integrity and essential commercial credibility to be so unjustifiably impugned.

Considering this fully documented record, would the subcommittee, its chairman, members, counsel or advisors have continued to deal with this witness or his Company?

Wm A Riordan

William A. Riordan
Assistant Attorney General

I certify that the attached are true and correct copies of the official records of the Navajo Nation Division of Administration and Finance.

Wilbert Pioche
Deputy Director/Custodian of Records
Navajo Nation Division of Administration
and Finance

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

BROWN EXHIBITS

SPECIAL COMMITTEE ON INVESTIGATIONS HEARINGS
TUESDAY, FEBRUARY 7, 1989

Agreement between Byron T. "Bud" Brown, Real Estate Broker for John Hall & Associates (AZ) and K. Tom Tracy, President of Tracy Oil & Gas Co. (AZ) re: 2/3, 1/3 Profit Split from Big Boquillas Ranch Sale (2/20/87)

Lease Documents from Camelback BMW/Porsche and Audi Dealership (AZ) for Chairman Peter MacDonald (1/21/87)

Handwritten Notes from Wayne James of Tracy Oil & Gas (CA) re: Big Boquillas Expenses [Note amounts dated "3-10" and "3-26" listed as "BB"/"PM" for $900] (5/26/87 and 7/9/87)

Valley National Bank of Arizona Wire Transfer for $25,000 from K. Tom Tracy of Reppel Steel & Supply (AZ) to Credit the United New Mexico Bank Account of Chairman Peter MacDonald (2/24/87)

Promissory Note for Peter MacDonald, Jr. from Byron T. Brown for $25,000 (1/14/87)

Consulting Agreement between Peter MacDonald, Jr., President of ROMAC Enterprises, Inc. and Byron T. Brown, President of Bud Brown Enterprises (1/1/88)

Hotel Bill and Credit Card Receipt from The Helmsley Palace (NY) for Bud Brown [re: Trip Discussing Big Boquillas Purchase] (5/17 - 5/21/87)

Check to "Cash" from Byron T. Brown for $9,000 (7/14/87)

Check to "Cash - E-L.V." from Byron T. Brown for $7,500 (7/29/87)

B-B Expense Account Check to Cash - "Expense" from Byron T. Brown for $5,000 (8/13/87)

Hotel Bills from the Las Vegas Hilton for B. Brown and P. MacDonald totaling $1,825.88 [paid for by Brown] (8/16 - 8/19/87)

Check to "Hilton - Fun & Game" from Byron T. Brown for $12,000 (8/19/89)

Check to "Cash" from Byron T. Brown for $7,500 (12/17/87)

Dated Wire Transcripts re: Conversations between Bud Brown, Chairman MacDonald and Rocky MacDonald

5-26-87

Big B

3-2	Cash ([illegible])	4,000 ✓
3-3	7D	5000 ✓
[3-10	BB	900 ✓]
3-18	–	5000 ✓
3-26	7D	5000 ✓
[–	BB	900 ✓]
4-2	7D	5000 ✓
4-10	TT & [illegible] BB Jr.	20,000 ✓
–	7D	5000 ✓
4-24	–	5000 ✓
4-27	BB [illegible] BB [illegible]	3000 ✓
–	Ticor	250,000
5-8	7D	5000 ✓
2-24	BB	5000 ✓
2-16	Ticor	100,000
3-13	BB (Vegas).	1500 ✓ WES
5-27 ~~28~~	~~[illegible]~~ 7D	8,946 ~~9,136~~ ✓
2-24	To N.M. banker	25,000 ✓
		454,246 ~~[illegible]~~
5-26	BB	50,000 ✓
		504,246 ~~[illegible]~~
6-10	FD	7,653 ✓
5-29	T – airplane rent	20,000 ✓
6-1	[illegible]	141 ✓
–	Chevron	679 ✓
6-5	7D	5000 ✓
6-8	BB – [illegible] Tour ride	5500 ✓
6-29	FD	6252 ✓
1-15	Bond	3000 ✓
4-7	Ticor	500 ✓
6-26	Bond	10,000 ✓
7-1	Chevron	1370
2-19	Az Corp Comm	10
4-2	[illegible]	66
		569,417

TM	BB	FD	oth
4000	5000	5000	30
[900	20,000	5000	250,0
900]	5000	5000	100,0
25000		5000	15
		5000	
		5000	
		8946 ~~9136~~	
30,800	30,000	38,946 ~~39,136~~	354,
	50,000	7,653	20,
	5,000	6,252	6
	5,500		

Valley National Bank of Arizona

WIRE TRANSFER ORDER

☐ SPECIAL NOTIFICATION CODE 12

TEST	Out going	In coming	DATE	TIME	Branch No.	Doc. Code

EMPLOYEE NAME

BANK OR BRANCH NAME

ROUTING NUMBER	$ AMOUNT OF TSF	BY ORDER (NAME)	ACCOUNT NUMBER
	25,000.00	Reppel Steel & Supply Co.	100-7386

BAR SPACE

RECEIVING BANK/SENDING	ADDRESS
United New Mexico Bank	Gallup, New Mexico

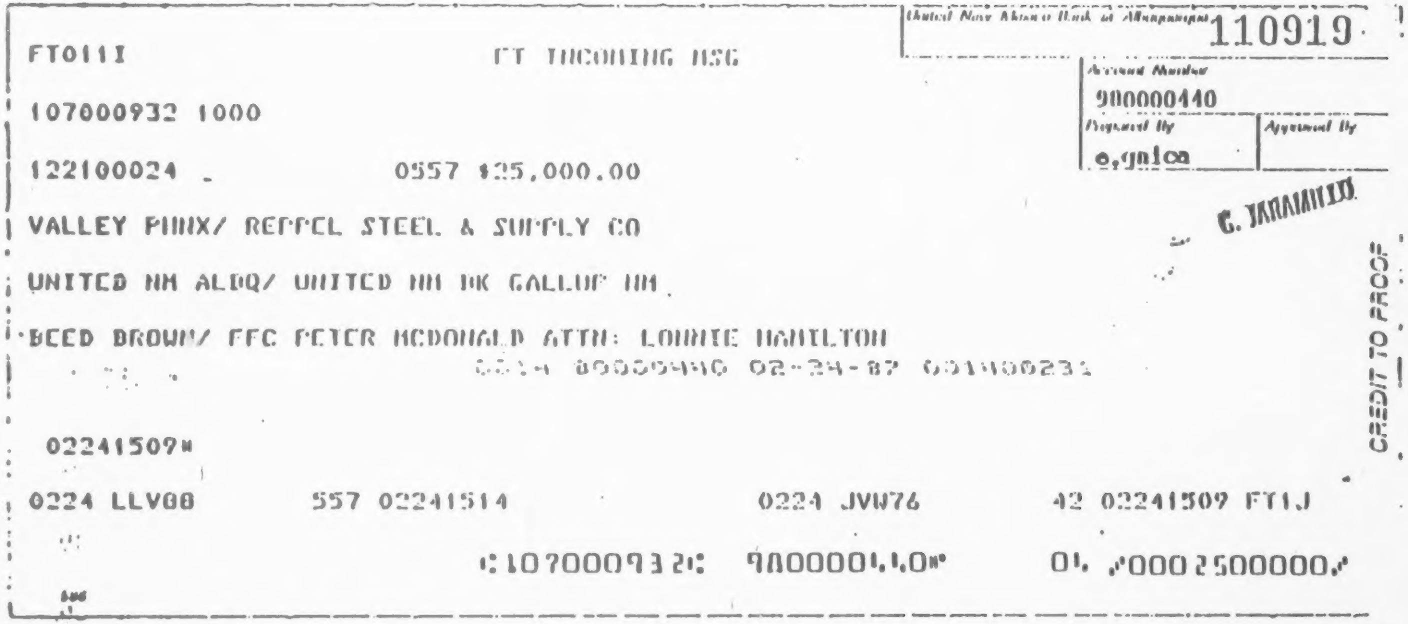
RECEIVING PARTY (CR OR PAY)	ACCOUNT NUMBER
Bud Brown for credit to Peter MacDonald	—

OTHER (E.G. SPECIAL INSTRUCTIONS)
ATTENTION: LONNIE HAMILTON

[illegible]	Branch No.	ANALYSIS

Signature

37-0036 REV. 8-81



United New Mexico Bank at Albuquerque 110919

Account Number
900000440

Prepared By
e.gnlca

Approved By

C. JARAMILLO

FT0111 FT INCOMING MSG

107000932 1000

122100024 0557 $25,000.00

VALLEY PHNX/ REPPEL STEEL & SUPPLY CO

UNITED NM ALBQ/ UNITED NM BK GALLUP NM

BEED BROWN/ FFC PETER MCDONALD ATTN: LONNIE HAMILTON

0224 80000440 02-24-87 001400231

02241509

0224 LLV08 557 02241514 0224 JVW76 42 02241509 FT1J

:107000932: 900000440" 01 "0002500000"

CREDIT TO PROOF

Camelback
BMW PORSCHE-AUDI
1144 East Camelback Road
Phoenix, Arizona 85014
(602) 248-0055

Pete McDonald
[illegible]
CUSTOMER NAME
ADDRESS
CITY ZIP

Stock No. 1474
Salesman [illegible]
Salesman [illegible]
Date 1-21-87
Bus. Phone
Res. Phone

NEW ☒ USED ☐ COLOR Black TRIM Grey Leather Del. Date ROS No.

86	6	BMW	735IA	WBAFG2411G1091124
		247	Sedan	Key No. HB13952

FILL OUT THIS SECTION IF USED CAR IS TO BE TRADED IN
YEAR ____ MAKE ____ MODEL ____
ODOMETER READING ____
BALANCE OWED TO ____
ADDRESS ____
None

Dlr. Ins.	Cust. Ins.		MOTOR VEHICLE $
	X	Radar Detector	
X		Custom Tires – Wheels	
X		Pin Stripes	
X		Paint Treatment	
X		Wheel Well Moldings	
		Subject to special	
		ordering 160 T [illegible]	
		with [illegible]	X
		in advance	
		[illegible] 47605	
		TOTAL PRICE	$

ODOMETER MILEAGE STATEMENT

Federal regulations require you to state the odometer mileage upon transfer of ownership. An incorrect or untruthful statement may make you liable for damages to your transferee, for attorney fees, and for fines or criminal penalties, pursuant to sections 409, 412 and 413 of the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. 92-513) as amended by Pub. L. 94-364.

I, Camelback B.M.W. (transferor's name, print) state that the odometer of the vehicle described below now reads 247 (miles/kilometers).

Check one box only

☒ (1) I hereby certify that to the best of my knowledge the odometer reading as stated above reflects the actual mileage of the vehicle described below.

☐ (2) I hereby certify that to the best of my knowledge the odometer reading as stated above reflects the amount of mileage in excess of designed mechanical odometer limit of 99,999 miles/kilometers of the vehicle described below.

☐ (3) I hereby certify that to the best of my knowledge the odometer reading as stated above is NOT the actual mileage of the vehicle described below, and should not be relied upon.

MAKE	MODEL	BODY TYPE
B.M.W.	735IA	Sedan
VEHICLE IDENTIFICATION NUMBER		YEAR
WBAFG2411G1091124		1986

Check one box only

☒ (1) I hereby certify that the odometer of said vehicle was not altered, set back, or disconnected while in my possession, and I have no knowledge of anyone else doing so.

☐ (2) I hereby certify that the odometer was altered for repair or replacement purposes while in my possession, and that the mileage registered on the repaired or replacement odometer was identical to that before such service.

☐ (3) I hereby certify that the repaired or replacement odometer was incapable of registering the same mileage, that it was reset to zero, and that the mileage on the original odometer or the odometer before repair was ____ (miles).

Transferor's Address (street) ____
Transferor's Signature (seller) T. [illegible] Date of Statement 1-21-87
Transferee's Name and Address (buyer) ____
Receipt of Copy Acknowledged ____

WARNING—UNLESS A CHARGE IS INCLUDED IN THIS AGREEMENT FOR PUBLIC LIABILITY OR PROPERTY DAMAGE INSURANCE, PAYMENT FOR SUCH COVERAGE IS NOT PROVIDED BY THIS AGREEMENT.
S/ ____

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER'S, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE: (A) ON ALL GOODS AND SERVICES SOLD BY DEALER, AND (B) ON ALL USED VEHICLES WHICH ARE HEREBY SOLD "AS IS — NOT EXPRESSLY WARRANTED OR GUARANTEED"

NOTICE: WHERE THE DEALER ARRANGES FINANCING THE DEALER MAY RECEIVE A PORTION OF THE "FINANCE CHARGE" FROM THE LENDER

DOWNPAYMENT: Trade-in ____	(A)	$
Less Pay Off ____	(B)	$
TRADE-IN (A less B) ____	(C)	$
REC. # 213 Cash Downpayment Previously Paid	(D)	$5000 00
REC. # ____ Cash Downpayment Paid Herewith	(E)	$[illegible]71 43
REC. # ____ Deferred Cash Downpayment	(F)	$
CASH DOWNPAYMENT (D, E & F)	(G)	$

Title Fee	$
Plate Fee	$
Weight Fee	$
Lieu Tax	$
TOTAL DMV	$

TOTAL DOWN PAYMENT (total of C & G)	$	2
UNPAID BALANCE	$	3
SALES TAX	$	4
ESTIMATED DMV FEES	$ 1078 80	5
DOCUMENTARY FEE	$ 35 00	6
TOTAL DUE TO SELLER	$	7

#213

#233 [illegible]

Purchaser certifies that he is of legal age, and agrees to sign a Security Agreement according to the terms herein. In the event Payoff figures are higher than quoted by the Purchaser, Purchaser hereby agrees to pay this sum on demand. This order is subject to credit approval and is not binding unless signed by an authorized representative of Seller. All used cars or trucks sold "AS IS" and without guarantee as to condition, year, model, unless otherwise specified in writing.

Complaints concerning unfair or deceptive practices or methods by the dealer shall be referred to the seller and, if the complaint is not resolved may be referred to the AZ. Department of Transportation,
Dealer Services
1801 West Jefferson, Room 356, Phoenix, Arizona 85007

NOTICE TO THE BUYER: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled in copy of this agreement. (3) Under the law you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.

SELLER - Camelback Automotive Corp.

Date 1/22 19__

Authorized Representative of Seller

RECEIPT OF A FILLED-IN COPY OF THIS AGREEMENT IS HEREBY ACKNOWLEDGES BY PURCHASER

Date 1-23 19 87

Purchaser's Signature

ADDITIONAL TERMS ON REVERSE HEREOF

DELIVERY RECEIPT

Public Liability to $100,000/$300,000;

Property damage to $50,000;

Deductible of $250.

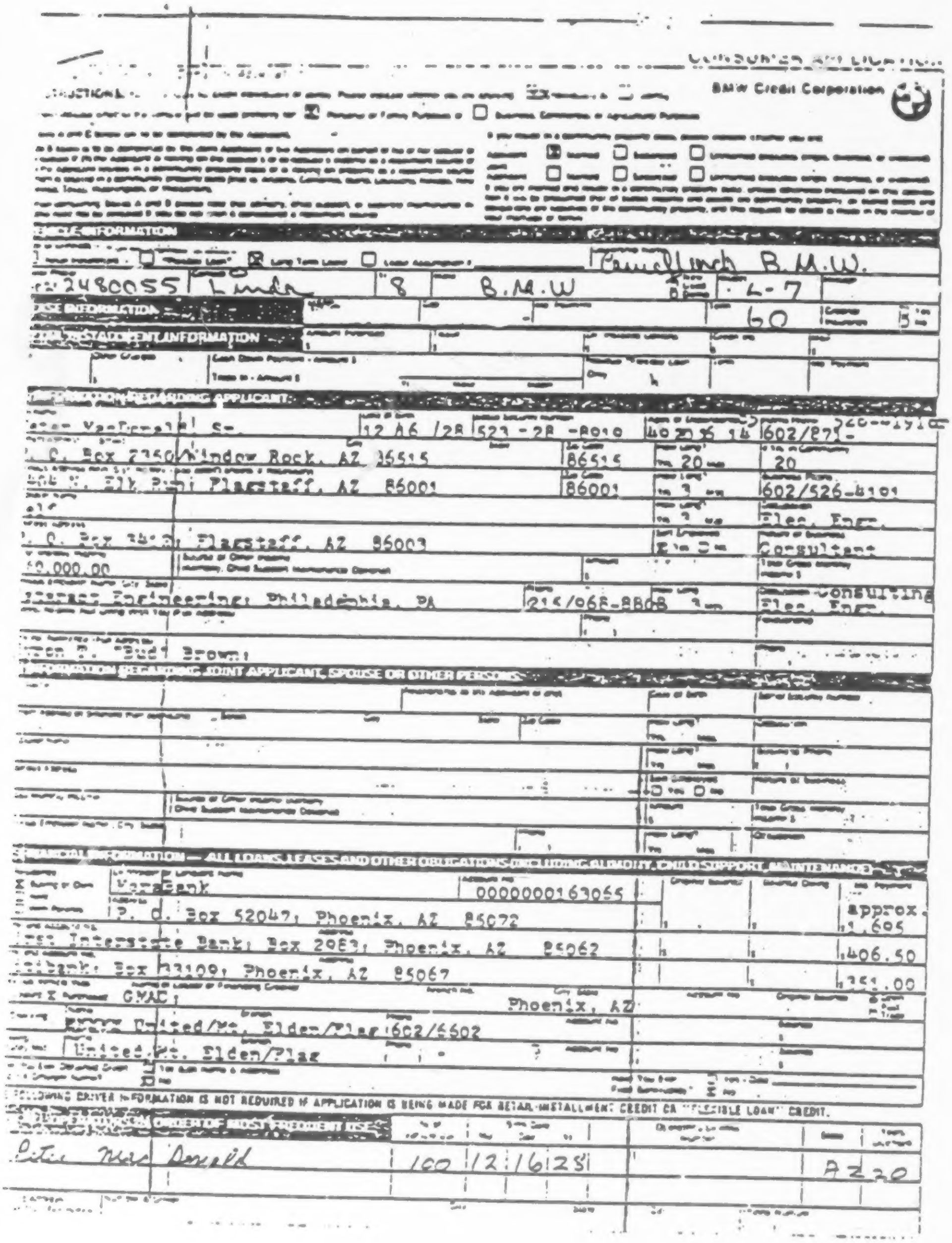
Liberty Bank

I HAVE READ BOTH SIDES OF THIS LEASE AND RECEIVED A COMPLETELY FILLED IN COPY BEFORE SIGNING BELOW.

GUARANTY

LESSEE INITIAL

READ BOTH SIDES BEFORE SIGNING



CONSUMER APPLICATION

BMW Credit Corporation

☒ ☐ ☒ ☐

☒ ☐ ☐

☐ ☐ ☐

VEHICLE INFORMATION

☐ ☒ Long Term Lease ☐ Cavalllinch B.M.W.

2480055 Linda 8 B.M.W 6-7

LEASE INFORMATION 60 5

INSTALLMENT INFORMATION

INFORMATION REGARDING APPLICANT

eter MacDonald Sr. 12 16 /28 523 - 28 -8010 40 20 56 14 602/871- 520-1910

. O. Box 2350 Window Rock, AZ 86515 86515 20 20

ELK Flagstaff, AZ 86001 86001 3 602/526-4101

ale 3 Elec. Engr.

. O. Box Flagstaff, AZ 86003 ☒ ☐ Consultant

0,000.00

Engineering; Philadelphia, PA 215/068-8808 3 Consulting Elec. Engr.

Brown; "Bud" Brown;

INFORMATION REGARDING JOINT APPLICANT, SPOUSE OR OTHER PERSONS

☐ ☐

FINANCIAL INFORMATION — ALL LOANS, LEASES AND OTHER OBLIGATIONS INCLUDING ALIMONY, CHILD SUPPORT, MAINTENANCE

☒ ValleyBank 0000000163065 approx. 1,605

P. O. Box 52047; Phoenix, AZ 85072

First Interstate Bank; Box 2083; Phoenix, AZ 85062 406.50

Citibank; Box 33109; Phoenix, AZ 85067 351.00

☒ GMAC; Phoenix, AZ

United/Mt. Elden/Flag 602/6602

United/Mt. Elden/Flag

☒

FOLLOWING DRIVER INFORMATION IS NOT REQUIRED IF APPLICATION IS BEING MADE FOR RETAIL-INSTALLMENT CREDIT OR "FLEXIBLE LOAN" CREDIT.

IN ORDER OF MOST FREQUENT USE

Peter MacDonald 100 12 16 28 AZ 20

#105 A1

AGREEMENT

ANY INCOME DERIVED FROM THE SALE OF THE BOQUILLAS CATTLE COMPANY RANCH WILL BE SPLIT 2/3 TO BRYON T. "BUD" BROWN AND 1/3 TO TOM TRACY.

FOR THIS PURPOSE "INCOME" IS DEFINED AS THE NET PROFITS BEFORE INCOME TAXES.

THE INCOME WILL BE DISTRIBUTED AS RECEIVED.

THIS AGREEMENT FOR DIVISION OF INCOME APPLIES WHETHER THE PURCHASE AND SALE IS HANDLED BY US AS A CORPORATION, PARTNERSHIP, OR JOINT VENTURE.

DATED THIS 20TH DAY OF FEBRUARY, 1987, IN PHOENIX, ARIZONA.

BYRON T. "BUD" BROWN

Tom Tracy
TOM TRACY

"B"

The Helmsley Palace
NEW YORK
455 Madison Avenue
New York, New York 10022
(212) 888-7000

BROWN, MR BUD
29
8777 E VIA DE VENTURA
SCOTTSDALE, AZ

CH-A 13 06

ROOM 801
PRICE 195.00
NO. PERS. 1
FOLIO 109417
PAGE 01
ARRIVAL 05/17/87
DEPART 05/21/87
DEPOSIT .00

DATE	REFERENCE NO.	DESCRIPTION	DEBIT / CREDIT
MAY17			
MAY17	211 00364 99	L. DISTANCE	2.33
MAY17	011 00801 00	ROOM CHG	195.00
MAY17	011 00801 00	ROOM TAX	16.09
MAY17	011 00801 00	AD OCC TAX	9.75
MAY17	011 00801 00	CTY OCC TX	2.00
MAY18	201 00941 99	LOCAL CALL	50
MAY18	211 00017 99	L. DISTANCE	4.31
MAY18	201 00041 99	LOCAL CALL	77
MAY18	201 00065 99	LOCAL CALL	50
MAY18	201 00137 99	LOCAL CALL	89
MAY18	211 00593 99	L. DISTANCE	3.93
MAY18	201 00749 99	LOCAL CALL	50
MAY18	201 00868 99	LOCAL CALL	.50
MAY18	131 09005 98	HARRY'S BV	5.33
MAY18	011 00801 00	ROOM CHG	195.00
MAY18	011 00801 00	ROOM TAX	16.09
MAY18	011 00801 00	AD OCC TAX	9.75
MAY18	011 00801 00	CTY OCC TX	2.00
MAY19	211 00226 99	L. DISTANCE	2.33
MAY19	211 00232 99	L. DISTANCE	2.52
MAY19	211 00857 99	L. DISTANCE	3.89
MAY19	211 00884 99	L. DISTANCE	1.00
MAY19	211 00900 99	L. DISTANCE	3.67
MAY19	211 00907 99	L. DISTANCE	4.10
MAY19	211 00911 99	L. DISTANCE	2.39
MAY19	011 00801 00	ROOM CHG	195.00
		BAL-FWD	683.39

THOMAS COOK TVL
TERESE #14609162
5401 OLD ORCHARD RD
SKOKIE, IL 60077

I agree to remain personally liable for the payment of this account if the corporation, or other third party billed, fails to pay part or all of these charges.

SIGNATURE

ROOM DATE DEPART CASHIER

The Helmsley Palace
NEW YORK
455 Madison Avenue
New York, New York 10022
(212) 888-7000

GUEST

BROWN, MR BUD
29
8777 E VIA DE VENTURA
SCOTTSDALE, AZ

CH-A 13 06

ROOM 801
PRICE 195.00
NO. PERS. 1
FOLIO 109417
PAGE 02
ARRIVAL 05/17/87
DEPART 05/21/87
DEPOSIT .00

DATE	REFERENCE NO.	DESCRIPTION	DEBIT / CREDIT
MAY19	011 00801 00	ROOM TAX	16.09
MAY19	011 00801 00	AD OCC TAX	9.75
MAY19	011 00801 00	CTY OCC TX	2.00
MAY20	201 00475 99	LOCAL CALL	.50
MAY20	211 00853 99	L. DISTANCE	4.58
MAY20	211 00668 99	L. DISTANCE	4.31
		TOTAL-DUE	720.62

TRAVEL AGENT

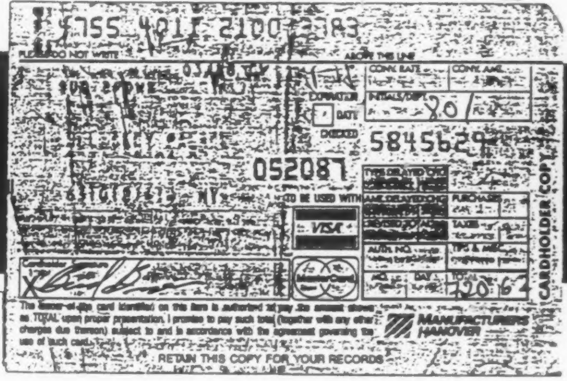
THOMAS COOK TVL
TERESE #14609162
5401 OLD ORCHARD RD
SKOKIE, IL 60077

CHARGE TO

I agree to remain personally liable for the payment of this account if the corporation, or other third party billed, fails to pay part or all of these charges.

SIGNATURE

ROOM DATE DEPART CASHIER


5755 4011 2100 2383

PLEASE DO NOT WRITE ABOVE THIS LINE

BUD BROWN

CONV. RATE

CONV. AMT.

EXPIRATION DATE

CHECKED

INITIALS/DEPT. 801

5845629

052087

TO BE USED WITH

VISA

MasterCard

PURCHASES

TAXES

TIPS & MISC.

AUTH. NO.

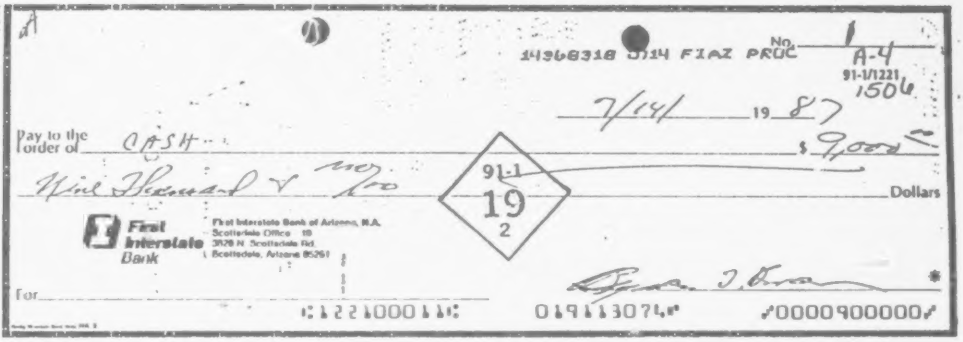
TOTAL 720 62

CARDHOLDER COPY

The issuer of the card identified on this item is authorized to pay the amount shown as TOTAL upon proper presentation. I promise to pay such total (together with any other charges due thereon) subject to and in accordance with the agreement governing the use of such card.

MANUFACTURERS HANOVER

RETAIN THIS COPY FOR YOUR RECORDS



14368318 0714 FIAZ PROC

No. 1
A-4

91-1/1221
1506

7/14/ 19 87

Pay to the order of CASH

$ 9,000 $\frac{00}{}$

Nine Thousand & no/100 Dollars

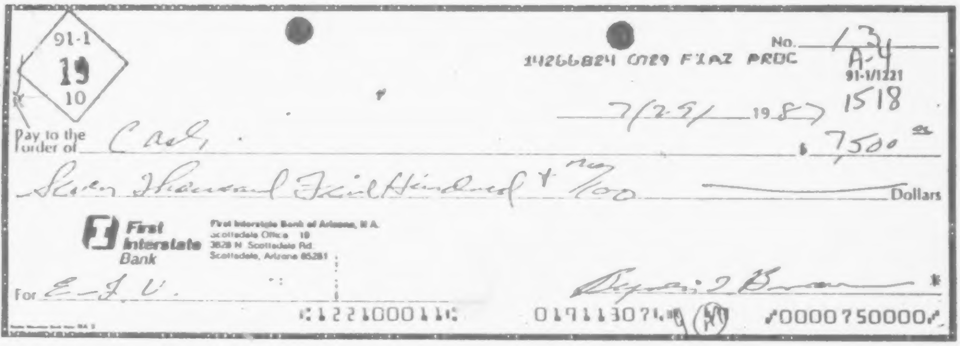
91-1
19
2

First Interstate Bank

First Interstate Bank of Arizona, N.A.
Scottsdale Office 19
3828 N. Scottsdale Rd.
Scottsdale, Arizona 85251

For

⑆122100011⑆ 019113074⑈ ⑇0000900000⑇



91-1
19
10

14266824 0729 FIAZ PROC

No. 13
A-4

91-1/1221
1518

7/29/ 19 87

Pay to the order of Cash

$ 7,500 $\frac{00}{}$

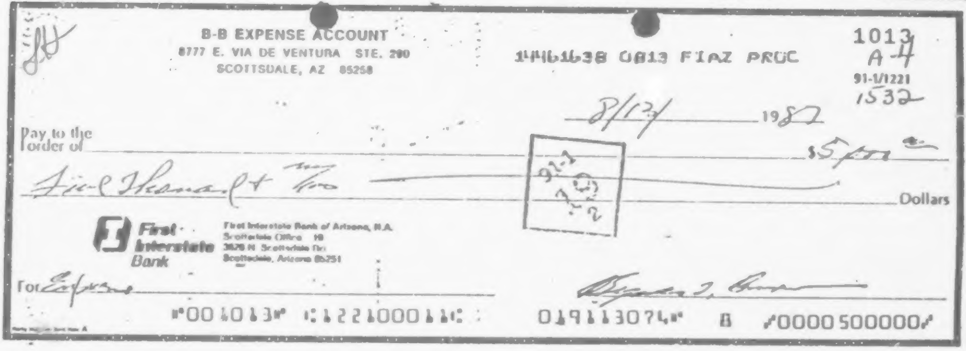
Seven Thousand Five Hundred & no/100 Dollars

First Interstate Bank

First Interstate Bank of Arizona, N.A.
Scottsdale Office 19
3828 N. Scottsdale Rd.
Scottsdale, Arizona 85251

For E-J.V.

⑆122100011⑆ 019113074⑈ ⑇0000750000⑇



B-B EXPENSE ACCOUNT
8777 E. VIA DE VENTURA STE. 200
SCOTTSDALE, AZ 85258

14461638 0813 FIAZ PROC

1013
A-4

91-1/1221
1532

8/12/ 19 87

Pay to the order of

$5,000 $\frac{00}{}$

Five Thousand & no/100 Dollars

91-1
19
2

First Interstate Bank

First Interstate Bank of Arizona, N.A.
Scottsdale Office 19
3828 N. Scottsdale Rd.
Scottsdale, Arizona 85251

For Expense

⑈001013⑈ ⑆122100011⑆ 019113074⑈ B ⑇0000500000⑇

ORARR 08-16-87 ORDEP 08-19-87
M ARR 08-16-87 DEP 08-19-87 GUESTS 1 RM TYPE KD RMS 1 RATE RMKS
CLERK XC SETTLEMENT CODE VI C.C. NBR 4755401121003783 EXP. DATE 3
RM NBR 21-109 RTE 90.00 XP N-RT VIP PLN
SPECIAL INSTRUCTIONS VI EXP 5-88
REMARKS
MESSAGES
NAME BROWN, B. GA TITLE
WITH
CMPY
ADDR 6249 N.78TH ST
CITY STATE SCOTTSDALE,AZ. ZIP 85253
SRC CODE DEPT
GROUP NBR
DEPOSIT DATE / /
DEPOSIT GROSS .00
A FOLIO .00
B FOLIO .00
TRAVEL AGENT VI 3/88 $700. #017366*JB/GA*
T·A ADDRESS
T·A CITY-ST ZIP
BILLING OPTIONS 1 2 3 4 5
FOLIO NBR 450699 RES NBR 0073098271 GTD *ARR TIME HOLD ORIG LASLHHHSFAUG14RA

LAS VEGAS HILTON

3000 Paradise Road Las Vegas, Nevada 89109

F GUEST FOLIO A PAGE 1 OF 2 IN 08-16-87 OUT 08-19-87 FOLIO 450699
NAME BROWN, B. GA
WITH
CMPY
ADDR 6249 N.78TH ST
CITY SCOTTSDALE,AZ. ZIP 85253
ROOM 21-109
RATE 90.00 PLAN CLERK XC
GROUP VIP
T/A VI 3/88 $700. #017366*JB/GA*
VI CR CD 4755401121003783 EXP 3

CDE	DATE	REF.	DESCRIPTION	ID	CHARGES	CREDITS	BALANCE
15	08-16-87	0802	735-3644	XAQ	.50		.50
15	08-16-87	0819	459-6576	XAQ	.50		1.00
34	08-16-87	790108	COFFEE SHOP	XAQ	7.16		8.16
64	08-16-87	790108	COFFEE SHOP TIP	XAQ	1.50		9.66
10	08-16-87	1622	602-945-7348	XAQ	.50		10.16
15	08-16-87	1659	459-6576	XAQ	.50		10.66
15	08-16-87	2022	735-3644	XAQ	.50		11.16
10	08-16-87	2160	602-948-3100	XAQ	.50		11.66
10	08-16-87	2182	602-945-2133	XAQ	.50		12.16
30	08-16-87	083463	BENIHANA	XAQ	218.58		230.74
60	08-16-87	083463	BENIHANA TIP	XAQ	40.00		270.74
00	08-16-87		RM & TAX 21-109		96.30		367.04
50	08-16-87		BEVERAGE	DBB	6.00		373.04
30	08-16-87		BEVERAGE TIP	DBB	1.00		374.04
10	08-17-87	0802	602-948-0550	XAQ	.50		374.54
37	08-17-87	592593	ROOM SERVICE	XAQ	18.82		393.36
67	08-17-87	592593	ROOM SERV TIP	XAQ	3.50		396.86
00	08-17-87		RM & TAX 21-109		96.30		493.16
10	08-18-87	1734	316-685-1213	XAQ	.50		493.66
37	08-18-87	598836	ROOM SERVICE	XAQ	16.17		509.83
67	08-18-87	598836	ROOM SERV TIP	XAQ	3.00		512.83
10	08-18-87	0476	316-682-4000	XAQ	.50		513.33
10	08-18-87	0510	316-682-6534	XAQ	.50		513.83
10	08-18-87	0086	602-991-6610	XAQ	.50		514.33

CONTINUED

F18

ORARR ORDEP
ARR DEP GUESTS RM TYPE RMS RATE RMKS
CLERK SETTLEMENT CODE C C. NBR EXP. DATE
RM NBR RTE XP N-RT VIP PLN
SPECIAL INSTRUCTIONS
REMARKS MESSAGES

NAME TITLE SRC CODE DEPT
WITH GROUP NBR
CMPY DEPOSIT DATE
ADDR DEPOSIT GROSS
CITY STATE ZIP A FOLIO
B FOLIO
TRAVEL AGENT BILLING OPTIONS
T A ADDRESS 1 2 3 4 5
T A CITY-ST ZIP
FOLIO NBR RES NBR GTD ARR TIME ORIG

LAS VEGAS HILTON

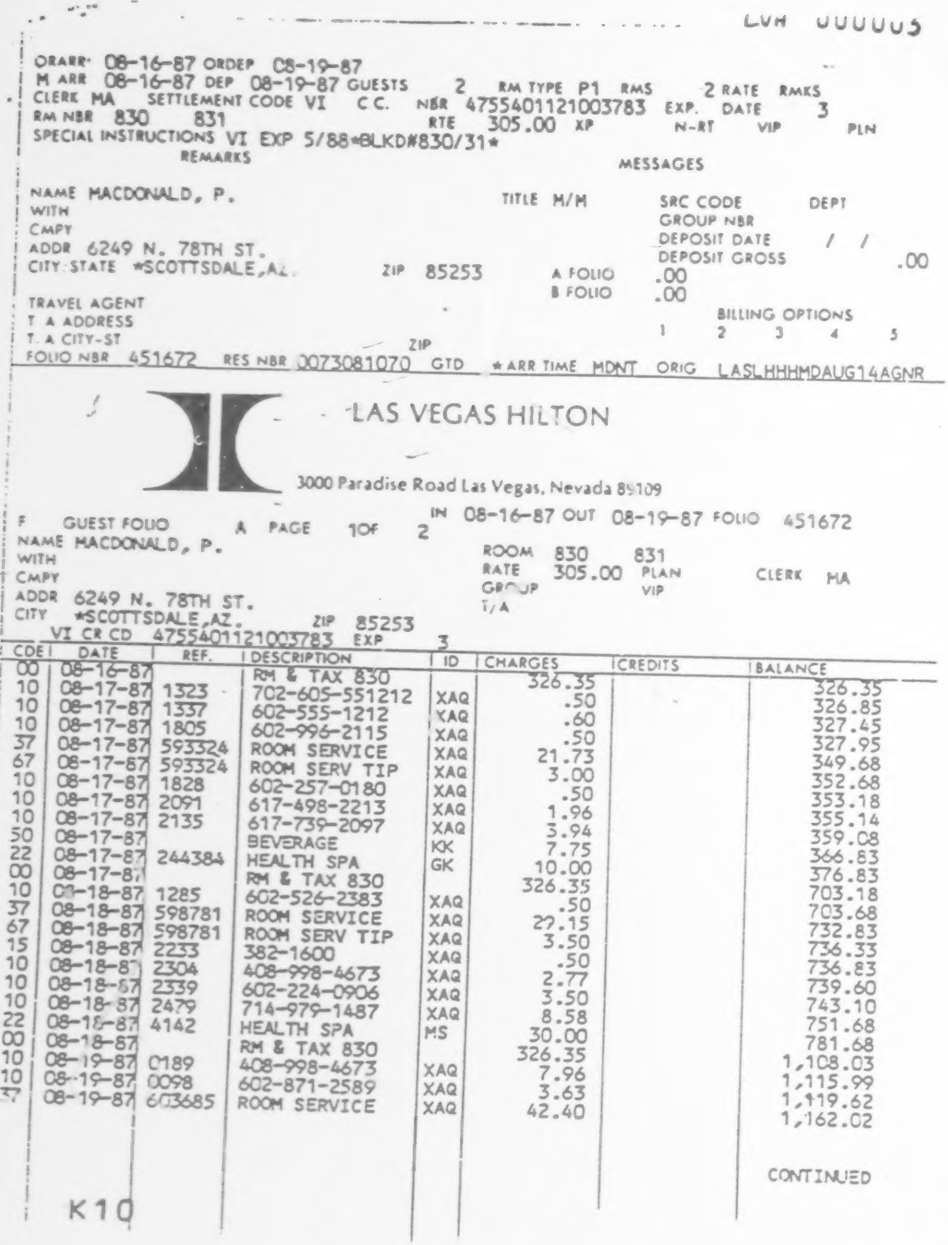
3000 Paradise Road Las Vegas, Nevada 8[illegible]109

IN 08-16-87 OUT 08-19-87 FOLIO 450699
F GUEST FOLIO A PAGE 2OF 2
NAME BROWN, B. GA
WITH
CMPY
ADDR 6249 N.78TH ST
CITY SCOTTSDALE,AZ. ZIP 85253
VI CR CD 4755401121003783 EXP 3

ROOM 21-109
RATE 90.00 PLAN - CLERK XC
GROUP VIP
T/A VI 3/88 $700. #017366*JB/GA*

DE	DATE	REF.	DESCRIPTION	ID	CHARGES	CREDITS	BALANCE
10	08-18-87	0187	602-998-0656	XAQ	.50		51[illegible].83
10	08-18-87	0192	813-595-5002	XAQ	.50		515.33
10	08-18-87	0361	602-998-0656	XAQ	.50		515.83
10	08-18-87	0473	316-733-2050	XAQ	.50		516.33
50	08-18-87		BEVERAGE	LS	2.00		518.33
50	08-18-87		BEVERAGE TIP	LS	2.00		520.33
50	08-18-87		BEVERAGE	LS	2.50		522.83
50	08-18-87		BEVERAGE	LS	2.25		525.08
00	08-18-87		RM & TAX 21-109		96.30		621.38
2	08-19-87		VISA	LSS		621.38	.00
5	08-19-87	0110	736-1737	XAQ	.50		.50
2	08-19-87		VISA	CAR		.50	.00
0	08-19-87		C/O TIME 11:15	CAR	.00		.00
					BALANCE		.00

G18



LVH UUUUUS

ORARR 08-16-87 ORDEP 08-19-87
M ARR 08-16-87 DEP 08-19-87 GUESTS 2 RM TYPE P1 RMS 2 RATE RMKS
CLERK MA SETTLEMENT CODE VI C.C. NBR 4755401121003783 EXP. DATE 3
RM NBR 830 831 RTE 305.00 XP N-RT VIP PLN
SPECIAL INSTRUCTIONS VI EXP 5/88*BLKD#830/31*
REMARKS
MESSAGES

NAME MACDONALD, P. TITLE M/M
WITH
CMPY
ADDR 6249 N. 78TH ST.
CITY STATE *SCOTTSDALE,AZ. ZIP 85253
SRC CODE DEPT
GROUP NBR
DEPOSIT DATE / /
DEPOSIT GROSS .00
A FOLIO .00
B FOLIO .00
TRAVEL AGENT
T A ADDRESS
T. A CITY-ST ZIP
BILLING OPTIONS
1 2 3 4 5
FOLIO NBR 451672 RES NBR 0073081070 GTD *ARR TIME MDNT ORIG LASLHHHMDAUG14AGNR

LAS VEGAS HILTON

3000 Paradise Road Las Vegas, Nevada 89109

F GUEST FOLIO A PAGE 1OF 2 IN 08-16-87 OUT 08-19-87 FOLIO 451672
NAME MACDONALD, P.
WITH
CMPY
ADDR 6249 N. 78TH ST.
CITY *SCOTTSDALE,AZ. ZIP 85253
VI CR CD 4755401121003783 EXP 3
ROOM 830 831
RATE 305.00 PLAN CLERK MA
GROUP VIP
T/A

CDE	DATE	REF.	DESCRIPTION	ID	CHARGES	CREDITS	BALANCE
00	08-16-87		RM & TAX 830		326.35		326.35
10	08-17-87	1323	702-605-551212	XAQ	.50		326.85
10	08-17-87	1337	602-555-1212	XAQ	.60		327.45
10	08-17-87	1805	602-996-2115	XAQ	.50		327.95
37	08-17-87	593324	ROOM SERVICE	XAQ	21.73		349.68
67	08-17-87	593324	ROOM SERV TIP	XAQ	3.00		352.68
10	08-17-87	1828	602-257-0180	XAQ	.50		353.18
10	08-17-87	2091	617-498-2213	XAQ	1.96		355.14
10	08-17-87	2135	617-739-2097	XAQ	3.94		359.08
50	08-17-87		BEVERAGE	KK	7.75		366.83
22	08-17-87	244384	HEALTH SPA	GK	10.00		376.83
00	08-17-87		RM & TAX 830		326.35		703.18
10	08-18-87	1285	602-526-2383	XAQ	.50		703.68
37	08-18-87	598781	ROOM SERVICE	XAQ	27.15		732.83
67	08-18-87	598781	ROOM SERV TIP	XAQ	3.50		736.33
15	08-18-87	2233	382-1600	XAQ	.50		736.83
10	08-18-87	2304	408-998-4673	XAQ	2.77		739.60
10	08-18-87	2339	602-224-0906	XAQ	3.50		743.10
10	08-18-87	2479	714-979-1487	XAQ	8.58		751.68
22	08-18-87	4142	HEALTH SPA	MS	30.00		781.68
00	08-18-87		RM & TAX 830		326.35		1,108.03
10	08-19-87	0189	408-998-4673	XAQ	7.96		1,115.99
10	08-19-87	0098	602-871-2589	XAQ	3.63		1,119.62
37	08-19-87	603685	ROOM SERVICE	XAQ	42.40		1,162.02

CONTINUED

K10

ORARR ORDEP
ARR DEP GUESTS RM TYPE RMS RATE RMKS
CLERK SETTLEMENT CODE C.C. NBR EXP. DATE
RM NBR RTE XP N-RT VIP PLN
SPECIAL INSTRUCTIONS
REMARKS MESSAGES

NAME TITLE SRC CODE DEPT
WITH GROUP NBR
CMPY DEPOSIT DATE
ADDR DEPOSIT GROSS
CITY STATE ZIP A FOLIO
B FOLIO
TRAVEL AGENT BILLING OPTIONS
T A ADDRESS 1 2 3 4 5
T A CITY-ST ZIP
FOLIO NBR RES NBR GTD ARR TIME ORIG

LAS VEGAS HILTON

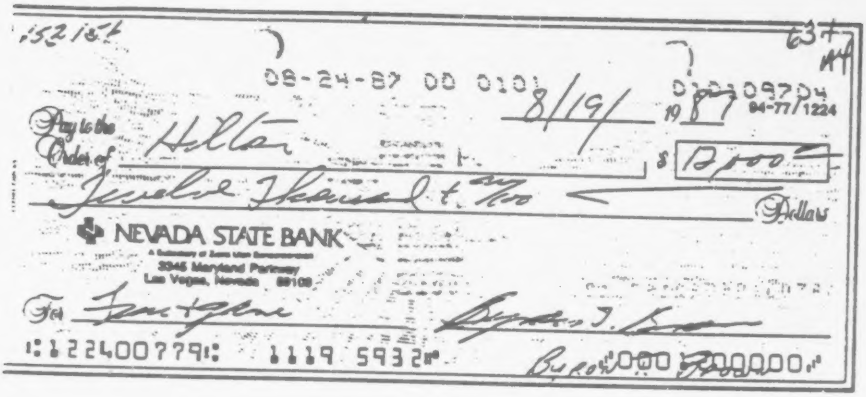
3000 Paradise Road Las Vegas, Nevada 89109

IN 08-16-87 OUT 08-19-87 FOLIO 451672

F GUEST FOLIO A PAGE 2OF 2
NAME MACDONALD, P. ROOM 830 831
WITH RATE 305.00 PLAN CLERK MA
CMPY GROUP VIP
ADDR 6249 N. 78TH ST. T/A
CITY *SCOTTSDALE,AZ. ZIP 85253
VI CR CD 4755401121003783 EXP 3

CDE	DATE	REF.	DESCRIPTION	ID	CHARGES	CREDITS	BALANCE
67	08-19-87	603685	ROOM SERV TIP	XAQ	5.00		1,167.02
10	08-19-87	0179	602-948-3100	XAQ	2.43		1,169.45
15	08-19-87	0193	736-1737	XAQ	.50		1,169.95
10	08-19-87	0275	602-774-5246	XAQ	1.89		1,171.84
10	08-19-87	0290	602-897-7235	XAQ	2.16		1,174.00
92	08-19-87		VISA	RC		1,174.00	.00
90	08-19-87		C/0 TIME 12:30	RC	.00		.00
22	08-19-87	44171	HEALTH SPA	HS	30.00		30.00
92	08-19-87		VISA	GWW		30.00	.00
					BALANCE		.00

L10



152181

08-24-87 00 0101

63
44

8/19/ 1987

94-77/1224

Pay to the Order of Hilton

$ 12,000 —

Twelve Thousand + no/100 Dollars

NEVADA STATE BANK
3345 Maryland Parkway
Las Vegas, Nevada 89109

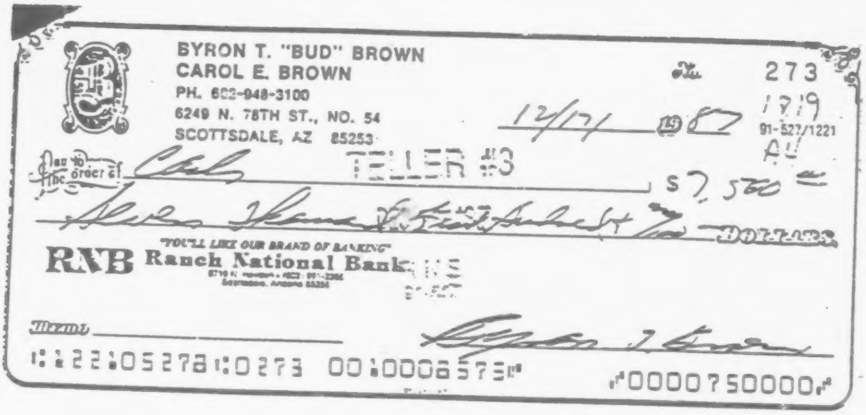
For Fun + Game

Byron T. Brown

⑆122400779⑆ 1119 5932⑈

Byron

⑈0001200000⑈



BYRON T. "BUD" BROWN
CAROL E. BROWN
PH. 602-948-3100
6249 N. 78TH ST., NO. 54
SCOTTSDALE, AZ 85253

No. 273

1719

12/17/ 1987

91-527/1221

AU

Pay to the order of Cash

TELLER #3

$ 7,500 —

Seven Thousand Five Hundred + no/100 DOLLARS

"YOU'LL LIKE OUR BRAND OF BANKING"
RNB Ranch National Bank

Memo

Byron T. Brown

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A26

PROMISSORY NOTE

$ 25,000.00

January ______, 1987
Phoenix, Arizona

UPON DEMAND BY BYRON T. BROWN (hereinafter "Note-Holder"), at any time after the execution of this note, the undersigned, Peter Mac Donald, Jr., (hereinafter "Borrower") promises to pay to Note-Holder, or order, the principal sum of $ 25,000.00 dollars, together with interest on the unpaid principal balance from the date this note is executed, the actual commencement date of this note, until paid, at the rate of ten (10%) per cent per annum. Principal and interest shall be payable IN FULL UPON DEMAND BY NOTE-HOLDER, at such place as Note-Holder may designate upon notice to Borrower.

Demand by Note-Holder shall be by written notice to Borrower and such notice shall not be less than thirty (30) days from the date such notice is mailed. If suit is brought to collect this note, Note-Holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorneys' fees.

Borrower may prepay the principal amount outstanding in whole or in part without penalty. Any partial prepayment shall be applied against the principal amount outstanding but shall not waive any rights of the Note-Holder to DEMAND PAYMENT IN FULL UPON DUE NOTICE, unless Note-Holder agrees in writing to waive such right.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors, and endorsers hereof. This note shall not be the joint and several obligation of all makers, sureties, guarantors, and endorsers and shall not be binding upon their successors and assigns. This note shall be the sole responsibility of the makers.

Any notices provided for in this note shall be given by mailing such notices by certified mail, return receipt requested, addressed to Borrower or Note-Holder, at their respective addresses, or such other addresses as they may designate by notice to each other.

The indebtedness evidence hereby shall be payable in lawful money of the United States.

Dated:

By____________________
Byron T. Brown
~~NOTE-HOLDER~~

Dated: Jan 14, 1987

By____________________
Peter Mac Donald, Jr.
BORROWER

#2761.
A 21

CONSULTING AGREEMENT

AGREEMENT dated January 1, 1988 between BUD BROWN ENTERPRISES (the "Company"), and ROMAC ENTERPRISES, INC. (the "Consultant").

1. Employment. The Company employs the Consultant and the Consultant accepts employment upon the terms and conditions of this agreement.

2. Term. The term of this agreement shall begin on January 1, 1988, and shall terminate on December 31, 1988.

3. Compensation. For all services rendered by the Consultant, the Company shall pay the Consultant a fee in the amount of $ 5,500.00 per month. At the option of either party to this agreement, fees may be paid in a lump sum payment at a time and place designated by either party, by either oral or written notice, without penalty.

4. Duties. The Consultant is engaged as a general consultant, to assist and provide legal support and expertise on all matters called upon by Company, and other such related duties as the Company may request.

5. Expenses. The Consultant may incur reasonable expenses for promoting the Company's business, including but not limited to, expenses for entertainment, travel, and similar items. The Company will reimburse the Consultant for all such expenses.

6. Termination without cause. Without cause, the Company may terminate this Agreement at any time upon two weeks written notice to Consultant at Consultant's business address. In such event, the Consultant, if requested by the Company, shall continue to render his services, and shall be paid his regular compensation up to the date of termination. Without cause, the Consultant may terminate the Agreement upon two weeks written notice to the Company at the Company's business address. In such event, the Consultant shall continue to render his services and shall be paid his regular compensation up to the date of termination.

7. Assignment. The Consultant acknowledges that the services to be rendered by him are unique and personal. Accordingly, the Consultant may not assign any of his rights or delegate any of his duties or obligations under the Agreement.

8. Relationship between parties. Consultant is retained and employed by the Company only for the purposes and to the extent set forth in this Agreement. The Consultant's relation

to the Company shall, during the period of this Agreement, and services rendered thereunder, be that of an independent contractor. The Company shall be held harmless for any acts of the Consultant. Further, the Consultant shall hold the Company harmless for any liability whatsoever.

9. Entire agreement. This Agreement contains the entire understanding of the parties. The Agreement may be modified by written agreement signed by both parties.

In witness whereof, the parties have executed this Agreement on January ________, 1988.

Peter Mac Donald, Jr. President ROMAC ENTERPRISES, INC.	Byron T. Brown President BUD BROWN ENTERPRISES

Tape of November 22, 1988

Conversation between Bud Brown and Peter MacDonald, Sr.

MACDONALD, SR.: So the circumstances is Peter MacDonald, Jr., uh, requested the money that he has from you for, for consulting services, because of consulting work. Did he personally ask you for the funds? Yes, I guess he did. This is not, I don't know who he is talking about. Me?

BROWN: Yeah.

MACDONALD, SR.: But, no, it's Rocky MacDonald. That you and Rocky work out this arrangement where he does consulting work for you or will do consulting work or whatever. Did he tell you what they were for? Again me, no. It's Rocky that did. Did they have any relationship with Bog Boquillas? No, absolutely not. Rocky had nothing to do with Big Boquillas. Was it a loan or a gift? I would say in this instance it was a, a loan against his contract that he's going to do for you.

BROWN: Hm hm.

MACDONALD, SR.: It's not a gift. Who provided you the account number? Rocky did, obviously. It is virtually certain that Senate investigators will spend....So the answer here is that it's Peter MacDonald, Jr.'s transaction with you.

BROWN: Let me borrow your pen. I may make some notes on it. I don't have a pen.

MACDONALD, SR.: (inaudible) It's Peter MacDonald, Jr.'s, ah, transaction with you, and nothing from me.

BROWN: Of course, see I don't know what Tracy or James might have told them but, but Tracy wire transferred the...

MACDONALD, SR.: What James said, what they said is, you know, it's really your word and Rocky's word against their word.

BROWN: Hm hm.

MACDONALD, SR.:	If he's saying something and they're saying something, it's, and I'm saying something, so it's, it's Rocky that asked you for this 25,000 to, because I'm bugging him because we need to pay that note. Did he personally ask you for the loan, for the funds? No, not MacDonald, Sr., but Jr. did. Did he tell you what they were for? Rocky did, I'm sure, what he wanted to do with it. Did they have any relationship with Big Boquillas? No, because Rocky had nothing to do with Big Boquillas.
BROWN:	Right, right.
MACDONALD, SR.:	Was it a loan or a gift? It's a loan against the work that he's going to do for you. Who provided you with the account number? Rocky did. Rocky gave you the account number cause he knows the account and, uh, uh, because like I know his account number, he knows mine. So that's, that's what that's going to be.

MACDONALD, SR.: Then probably the next question they're going to ask you if you did, when you were doing this did you talk to Sr. because it's Sr.'s account. And did you say anything about you checked into his account and that Jr. wants to do this.

BROWN: Hm hm.

MACDONALD, SR.: Now the answer there would be, either yes or no. And probably the appropriate answer would be maybe yes. Yeah, I, I checked it out and the Chairman indicated that yes that his son did owe him some money and, uh, and, uh, that was so - he was legitimate. That, that would be the answer I would strike. Because under ordinary circumstances going through this, it's what you would do. Right? You would say, unless Rocky says, you know, just, I don't want my father to know it. Then you just went ahead and did that.

BROWN: Hm hm.

MACDONALD, SR.: To your knowledge, did he really execute the note that day? Did he give it to you that day? If I was asked that question, I don't know whether he actually signed it that day, but he gave it to me sometime after that. What's wrong with that? He signed it. It could be a week or two or three weeks later that he give you this, but in the process up here it was verbally discussed that he was going to do work for you in this amount, uh, by loaning him this advance to his, uh, the work that he's going to do for you. And, uh, I don't know whether he signed it on that day or a day later, all I know I received it sometime after that. Isn't that a good answer?

BROWN: Yeah, yeah, that's...

MACDONALD, SR.: You know, that's the answer. I don't know whether he signed it that day or not. All I know is he gave it to me. I don't remember him giving it, I don't remember him giving it to me on that day, but all I know is he gave it to me sometime later. I don't know whether it was January or February that he gave me the note. So I think that's...

BROWN: Okay.

MACDONALD, SR.: ...that's the answer. Uh, "C," if the note was executed in January '87, but you did not receive it then, when did you receive it? I don't, I don't know when I received...But I know I received it sometime early, sometime right in there. Maybe it was February. I don't know. I received it sometime after that. Why was the note executed more than a month prior to the wire transfer? Because obviously, ah, ah ...

BROWN: See those are questions that I just, I don't know the, I don't know the answers to.

MACDONALD, SR.: Whatever, this, whatever this is, it's got to be, cause it's going to come back to Rocky again.

BROWN: Hm hm.

MACDONALD, SR.: And Rocky has to give the same answer. So that's why if you, if you kind of remember writing it down . . . obviously, if the note was executed in January and you did not receive it then, when did you receive it? I don't know. I think sometime early, I know sometime early in '87, maybe late in January or maybe February. I don't know. I think, if you try to be specific then, you know, that's not good. But it's reasonable for me to receive...Like if you give me a letter of some sort, I don't remember unless I wrote it down somewhere. And I don't do that all the time. And that's legitimate. Why was the note executed more than a month prior to the wire transfer? I assume that the wire transfer was done in February '87.

BROWN: I think so, but I'm not sure either.

MACDONALD, SR.: That's what he's saying, why, so he's saying that this January note was executed more than a month prior to the wire transfer. And, uh, because you and he discussed this early on, back in December, and I asked him to give me a, if that's what he wants to do I'm willing to help him out, and he promised me he's going to make out a promissory note and a consulting contract that would, that would, uh, allow for this. So, that's when he, when he made it out and I received it. Of course, if, if, uh, this promissory note that he made, I don't know whether that's right. When was the wire transfer made?

BROWN: I think in February.

MACDONALD, SR.: You think so, huh?

BROWN: I think so.

MACDONALD, SR.: If it is, then, uh, then just say we discussed this way back in December, you and he, and, uh, and, uh, I asked him to give me a note. And he gave it to me in, uh, sometime in January or...I really didn't receive it until sometime toward the end of February I think. I mean toward the end of January or somewhere in February. All I know is that when I saw the date it was later than when it was written. I really don't know exactly what date it was. But see that would make it like if I, if I am over here, signed and typed a promissory note here, and I wanted to get a loan from you, then I date it, I sign it and then somehow I carry it around and forgot to give it to you and maybe next week I give it to you.

BROWN: Hm hm.

MACDONALD, SR.: Well, then, then from there, once you get the note, then it's going to take you some time to make an arrangement to make a wire transfer. So from the date I signed, typed this thing up, whatever I did, and give it to you, then, you know, you know, you got my signature. Then it's going to take you some time to make the arrangements, so obviously from the time he made the note until the time you get the wire transfer in, there's some lapse of time. You don't know what that time is. And if it's a month, it's a month. But you didn't get it a month, exactly on the 14th. Cause you know that, because when you saw it, it was much later. You don't know whether it was late January or early February. You don't know. All I know is when I got it, it was late and second to that I, I did not, as soon as I got the note I did not go make the wire transfer. I had to get some other information too before I made the transfer. So obviously that's the reason for the delay on the date he signed it and supposedly typed it out and the time he gave it to me to the time I finally got around to making these transfers. There was a lapse of time. So I think that's that's a legitimate explanation, don't you think?

BROWN: And, of course, I don't know what Tracy has said. I don't know what James has said, because they're the ones that made the wire transfer.

MACDONALD, SR.: See James, Tracy and James don't know your relationship with Rocky.

BROWN: Hm hm.

MACDONALD, SR.: They don't know the note exists.

BROWN: Yeah.

MACDONALD, SR.: All they know is what you said to them verbally at the time and, and you have the, you have the document. You have the whatever it is that backs you up. All they know is that you told them you wanted money transferred to my account. Right?

BROWN: Right, right.

MACDONALD, SR.: That's all they know.

BROWN: Right.

MACDONALD, SR.: What you're saying is that the background of this, yes, that's probably what they say, if they're going to talk. I think that he's not going to talk. That's what I'm told. That's what Rick was saying.

BROWN: You mean Tracy?

MACDONALD, SR.: Tracy's not going to talk.

MACDONALD, SR.: And, uh, and because of that, uh, if the guys, if the people don't talk, all of these conflicting stories become a major evidence against, against the prosecutors. Against the investigators. Because now they have to make a decision. Now this is, these people are saying a lot of these are rumors, you know, suspicion. All kinds of things going on. And that's what they got. Now in order to get the confirmation or denial, they got to talk to the people that are really involved. And if they can't get that, then they, they're stuck. If all they have is hearsay and I think so and I saw somebody with this and so and so and so and so and it looked, what they have looked like what it appears to be, but there's no hard evidence and, and, uh, until they get down as close to (inaudible) to this person here. So I don't know. I think that if Tracy says...Obviously Tracy doesn't know what you and Rocky are talking about back in December and January.

BROWN: Hm hm.

MACDONALD, SR.: And even February. All Tracy knows is that you asked him to make this wire transfer to this account, MacDonald, Sr. account. That's all he knows. And that's verified by the fact that it happened. But why it happened, how it happened is you and Rocky's story. And it has nothing to do with Big Boquillas. It has everything to do with Rocky's need to pay his portion of the loan and obligation. How would Jr. know that you were going to loan...Let's see. What did you know about any obligation that Peter, Jr. might have on the note? Well, I guess he just told you that he has a note due over there that he shared with his father and he wants, he wants to, he promised to pay his father back and it didn't materialize so he needs to do this. How would Peter, Jr. know that you were going to loan it to him or his dad? Well, he didn't. He just talked to you back in December, saying that he would like to, that you advance as a loan to him an amount of money that, uh, this amount of money so that he could work for you in any manner that would suit his expertise. You did that because you know him and you know his father and you aren't doing this as any kind of favor or gift or anything like that.

MACDONALD, SR.: Have there been any discussions with Peter, Sr. about paying the note? No. He don't discuss his note with me nor does Jr. discuss his notes with you with me. He is a man. He does his own thing. And I do my own thing. So have there been any discussion with Peter, Sr. about paying the note? It's not my note. Why should you talk to me about it? Right.

BROWN: Hm hm.

MACDONALD, SR.: In other words, the real root basis here is that, uh, that you and Rocky had a conversation back in December, '86 and January, '87 wherein he needs to pay his portion of a note and, uh, that he has, and the way he wants to do that was make it as a loan against his future, his future work in the consulting contract that he wanted to execute. And he wanted to work and he's going to work it off and definitely you at that time, you wanted to go out and do some other things with Indian tribes. Be it oil and gas or cattle or whatever it is. And obviously concentrating on Big Bo and they asked did he help you out on Big Bo. No. I didn't want him involved because his father was there and since Chairman MacDonald is a friend of mine, I've known him for a long time, I was trying to keep him out of that, because I knew that it's not right for me to be involving Jr. or even Sr. in this matter (inaudible) work directly with the departments and the divisions who are responsible for it. So I think the answer to why, why hasn't he made payment on it is probably number one he doesn't have any money to make payment on it and number two your and his understanding is that he's going to work for you. If he doesn't work for you when he makes his money he's going to pay it back. And, uh, therefore, yes, make the demand and he hasn't made a payment or he hasn't...Has he wrote you a letter? Rock?

BROWN: Uhn uhn. I haven't heard a word from him.

MACDONALD, SR.: So maybe I should have Rock write you a letter and say I received your demand note. I told him that a long time ago that, answer back. Answer to his letter and say I received your demand note. Here's my situation. I'm short on money and this and that. As we have talked about, apparently back when I made the note, I want to work for you and work it out on a, on a what do you call it...

BROWN: Consulting.

MACDONALD, SR.: Yeah, on a consulting arrangement. If you don't feel this is appropriate, please let me know and I'll do what I can to see if I can make even maybe interest payment or something, I told him to do that. So that would kind of show that your previous conversation with him was that this is a loan against the work that he's going to do. And that's where this consulting contract comes in. (inaudible) Then "E," what is Peter, Sr.'s role, if any, in the execution or delivery of the note to you? Nothing. I'm not aware of it. I don't know anything about it. Right? What is Peter, Sr.'s role, if any, in the execution and/or delivery of the note to you? Nothing. So I think that that's a good scenario on that.

MACDONALD, SR.: Was the consulting agreement drafted at the same time as the promissory note? I would say, uh, yes.

BROWN: Hm hm.

MACDONALD, SR.: To the best of your knowledge, you received both the note and the consulting agreement about the same time.

BROWN: Hm hm.

MACDONALD, SR.: Was the consulting agreement created as a device for repayment on the promissory note? If the answer is yes, why was the promissory note dated almost one year prior to the consulting agreement?

MACDONALD, SR.: Uh, if the, uh, so if this is the case the answer to number one, "A," is I don't know. You know, you get a promissory note first and then later on you get the, you don't know how far late it is, but you know you get the consulting agreement much later on. And, uh, that answers this question. Why? I don't know, because Rocky was the one generating these things. Right? Rocky generated the note. He's the one that gave you the note. Rocky is the one that finalized the consulting agreement. I don't know why there's, there's a difference between this. But from the beginning no matter what has happened here, the understanding that you have with him was that he wants to borrow in the way of advance the work that he's going to do for you and, uh, to pay his note off that he has at the bank with his father. And, uh, you ask him to give you, you ask him to give you a note and also a consulting contract. The note (inaudible) sometime later a consulting contract came in. And, uh, obviously since you and he are friends you're not putting the screws. You're busy with Big Bo and he's busy with something else. You know, I think that's all you can say to these guys.

BROWN: Yeah.

Nov. 22, 1988

MACDONALD, SR.: It had nothing to do with his father, and his father had no part in this transaction and, uh, Rocky had no part in Big Bo.

It's you and Rocky's transaction. Part of this 25,000 deal where you're going to make this consulting agreement with you and Rocky where he could, uh, he promised on your part that you would retain him for $5,000 a month or so. And, uh, with that then he, uh, wanted the, uh, car, since he doesn't have a vehicle. He flies in and out and when he's here he wanted to have a car. And, uh, so that's what you did, whatever you did, make the down-payment, get the lease made out. And, uh...I think you used my address, didn't you?

BROWN: Yeah, your Flagstaff address.

MACDONALD, SR.: Just used his father's address because obviously he didn't have enough, what do you call it?

BROWN: Credit.

MACDONALD, SR.: Credit to do this, so he used his father's, actually the amount of down-payment I made and the payments I made are for him. For Rocky. You have your own note and he certainly has the understanding that it's all going to come out of his consulting contracts when he starts working. (inaudible) use his father's credit, because he didn't have one. And, uh, and, uh, the way, the amount of money you paid and the two or three payments you made were to, uh, all count against his consulting contract. So now he owes you the 25,000 plus whatever amount of payment you made on his BMW. Rocky's BMW. See he's making his own payments now. Right?

BROWN: Hm hm.

MACDONALD, SR.: So that would be the case. Did Peter, Sr. ask you to make those payments? Jr. did. Right?

BROWN: Hm hm.

MACDONALD, SR.: And the reason that he asked you to make those payments, he's falling short. Ah, uh, therefore...but all that stuff was an understanding was that those will be charged against his consulting contract. Why did the payments stop? Well, it was never your intention to make payments.

BROWN: Right.

MACDONALD, SR.: It was your intention to help him get it and then he would make payments. And, uh, and obviously the couple of times that he couldn't make payments, I helped him out. But all that is charged against his consulting contract. So, uh why did (inaudible) did the consulting agreement have any relationship to these BMW payments? Yes, they did. They were part of the understanding you had. And finally I think they will heavily pursue the school tuition question. Has Tracy paid Peter's daughters' tuition in Massachusetts? No.

BROWN: I don't know anything about...

MACDONALD, SR.: You don't know, because you don't know what Tracy is doing.

BROWN: No.

MACDONALD, SR.: If they ask you that question you don't know. You have no idea. Why do Tracy's records show payment for the girls' tuition? I don't know. Has he...

BROWN: No, I don't

MACDONALD, SR.: You got to answer these questions that way. And, and, and fill your mind and your spirit that the bottom line is that all this other stuff, the bottom line is that you have an agreement with Rocky on a consulting basis. You lent him the money. And, uh. . .how this paperwork (inaudible), obviously that's no control of you or his. One follows the other, so many months or later, whatever it is, obviously that's a problem to them, but to you (inaudible) after you made that understanding that when you started working on this Big Bo it was seven days a week, 24 hours a day thing for you.

BROWN: That's right.

MACDONALD, SR.: You worked your ass off and you didn't, you didn't have time to do any other thing or have Rocky do any other thing and he was doing the work. And besides his father was the Chairman and I don't want to get him involved and get his father in trouble either. Even for that reason, I refrained from even discussing in any detail whatsoever about what I'm doing with the tribe, with the Chairman.

Tape of Dec. 14, 1988.

Conversation between Bud Brown and Peter MacDonald, Jr.

MACDONALD, JR.: (inaudible)

BROWN: Oh, Okay. I just got home.

MACDONALD, JR.: Yeah. (inaudible)

BROWN: I didn't get home till late last night. That's why I didn't return your call.

MACDONALD, JR: That's okay. No, I figured you'd be pooped. I, I just didn't know how long it was going on.

BROWN: We went for about six hours and then, uh...

MACDONALD, JR.: How'd it go?

BROWN: Well, not too, too good. They're, they're really bearing in.

MACDONALD, JR.: Uh huh.

BROWN: Ken Ballen, Wick Sollers both were here; they each asked questions. It was really tense.

MACDONALD, JR.: Hm hm.

BROWN: And then my attorney had to leave for awhile. He had a court appointment downtown on another matter. And then the attorneys had a disagreement over it. Of course, the main focus is on the $25,000 oote and the BMW.

MACDONALD, JR.: Sure, sure.

BROWN: And I stuck to the line...

MACDONALD, JR.: Good.

BROWN: That we discussed in the car.

MACDONALD, JR.: That's great.

BROWN: I'm just afraid that I'm facing a multiple, multiple amount of perjury charges. I'm sticking to the line though.

MACDONALD, JR.: Well, that's exactly what we're doing.

BROWN: Well, you're going to stay with me on it, huh?

MACDONALD, JR.: I'm staying right here. We're all three of us Three Musketeers shoulder to shoulder.

BROWN: Well, we got to.

MACDONALD, JR.: You bet you.

BROWN: Cause the only thing I'm worried about is the perjury.

MACDONALD, JR.: Well...

BROWN: The Big Bo can stand on its own. But a perjury charge is something else.

MACDONALD, JR.: Well, I think there's a way around that. There's got to be. Everybody else gets around it. As far as I'm concerned they've got that (inaudible)...

BROWN: Well, course that's an unknown. We don't know who all they've talked to.

MACDONALD, JR.: Yeah, but everything else is circumstantial. They don't have any hard evidence. I mean there's only three people knew what the real story was. And that's you, me and dad. That's it. I don't care what anybody else says. (inaudible) There's nobody involved but us three.

BROWN: Yeah, but even my own attorney doesn't believe me.

MACDONALD, JR.: Well...

BROWN: And the Senate guys don't either. But my concern is are you strong enough and is your dad strong enough to stand up to this without, usually what happens somebody cracks.

MACDONALD, JR.: Oh, I understand. That's what they're hoping. That's their, that's their whole game like I said they're going to try and scream and intimidate you and laugh and whatever and hope somewhere down the line that you break, I break and otherwise they've got nothing. They can hee haw all they want. They can make whatever innuendos they want to.

BROWN: Well, I guess...

MACDONALD, JR.: See what I'm saying?

BROWN: Yeah

MACDONALD, JR.: You know, that's, and that's all they've got right now. And if then come up with something else it's still circumstantial. There's no hard facts.

BROWN: Do you see any possible way that they could take anybody's deposition that would blow a hole in our story?

MACDONALD, JR.: Well, taking all the players here everybody is an outsider. Nobody really knew that, or could have known, or even needed to be told... (inaudible)

BROWN: Yeah, that's true.

MACDONALD, JR.: You see what I'm saying?

BROWO: Yeah.

MACDONALD, JR.: It's nothing we would have ever said to anybody. And as far as the arrangements for the wire transfer, there was no reason to tell anybody else who, for or why it was going or whatever, other than the three of us. See what I'm saying?

BROWN: Okay, course Tom Tracy, he knew about the wire transfer.

MACDONALD, JR.: Oh yeah, but he was only the person to send it. You know what I'm saying. He doesn't know the circumstances of why there was a loan, why... And even if there was, there was no reason to tell him.

BROWN: But you got to remember this, that Tracy and James, James found the BMW and Tracy arranged the financing at the bank. What the hell are they going to tell them? Are they going to tell them that they're getting it for Peter, Jr.?

MACDONALD, JR.: They don't know that they weren't. You see what I'm saying?

BROWN: You and I know, you and I know different.

MACDONAMD, JR.: Yeah.

BROWN: They're probably, they're probably...

MACDONALD, JR.: But see even if they say that, you know, the fact that it appears that way. Because... (inaudible)

BROWN: Have you ever met...Yeah, you've met Tracy. Have you ever met James?

MACDONALD, JR.: No, I haven't.

BROWN: You've met Tracy, haven't you?

MACDONALD, JR.: Yeah.

BROWN: Okay, talk to you later then.

MACDONALD, JR.: All right, buddy. Just hang in there now.

BROWN: I'm trying but I'm not.

MACDONALD, JR.: Take deep breaths...

BROWN: Hell, I can't breathe and I can't sleep. I can't do anything. I'm about ready to get in an airplane and go up to 30,000 feet and cut the pressurization off.

MACDOOALD, JR.: Just hang in there, buddy.

BROWN: All right.

MACDONALD, JR.: It'll work itself out. I promise you.

BROWN: I'll see you later.

MACDONALD, JR.: All right, buddy, hang tough.

BROWN: All right.

MACDONALD, JR.: Bye.

BROWN: Bye.

Tape of Jan. 5, 1989

Conversations between Bud Brown and Peter MacDonald, Sr.

BROWN: Okay, when the money was wired transferred, when the 25,000 was wired transferred, that was in February or something. The note was dated January. But the fact that, that you and I and Rocky are the only three that know that that's bullshit. Okay?

MACDONALD, SR.: Uh hmm.

BROWN: So what do we. Who, who else could blow a hole in that story?

MACDONALD, SR.: The only other person that would be, the guy that made the, the transfer. That's ah...Tracy. Like, you know, in your letter, that what's his name wrote, Mel McDonald. What is Tracy saying? And he said something about...Tramway, or something like that...

BROWN: Yeah, there was a, there was a consulting agreement that Rocky had or you had with me on the Aerial Tramway.

MACDONALD, SR.: I think it was me, or something like that.

BROWN: Which was also bullshit.

MACDONALD, SR.: Right. Now so that's the only...there again, the question may be why, why is Tracy doing this? Well, I have no, no control over that. It's just between you and Tracy. Tracy owes you some money as I understood it.

BROWN: That's right. And I think Tracy might be trying to set ol' Brown up too. I don't know who in the hell is for me or against me.

MACDONALD, SR.: Well, you can bet you your bottom dollar that I'm with you and Rocky's with you.

BROWN: Well just as long as, as we're all telling the same story.

MACDONALD, SR.: Yeah. Well, don't let the, the separation or lack of communication give you a concern that there is something going on. That's the last thing that, that I would do and I'm sure that that's the last thing that Rocky would do.

BROWN: Well, the thing that, that I'm the most fearful of is that I have, I have told the story under oath. And I'm the only one who's told it. You know, you guys have got to tell the same story.

MACDONALD, SR.: Right.

BROWN: And if there is any deviation from that, then somebody's ass is gonna get hung.

MACDONALD, SR.: Right.

BROWN: That's...I have no intention...

MACDONALD, SR.: I don't think that anybody's ass is to be hung at all. If anybody's ass they're trying to hang, it's me. Because if they, if they get over the, if they get over the Big Boquillas bullshit and, the BMW and any other things like that, I'm sure they have got ten or fifteen more other stuff that has nothing to do with you, but may have something to do with Larry Ward or has something to do with all these other people that, that I work with.

BROWN: Yeah, your $750,000 office made the newspapers.

MACDONALD, SR.: That's right. And my friend was supposed to have been the contractor to do that, right? And that kind of stuff. So I mean that, I, I feel that, you know, that I'm the, I'm the number one target. And that's the sad truth. Face it that way. That I get rid of this, which is you and Tracy, whatever it is on this Big Bo, then I'll probably have five or six other things that I, I still have to surmount.

Jan. 5, 1989

BROWN: Have they been subpoenaed?

MACDONALD, SR.: Oh yeah. They all have. Oh yeah. John Paddock, Jim Atcitty, and Larry Manuelito, and Pat Chee Miller, and there must be eight or ten of the, everybody who could provide everything under the sun. And I know why because it's goddamn Chapella and Zah who gave them those names. How would the goddamn Ken Ballen know? Right?

Tape of Jan. 7, 1989

Conversation between Peter MacDonald, Jr., Bud Brown and Peter MacDonald, Sr.

BROWN: What should I tell them, they are going to hammer me on that, they are going to hammer me on the 25,000 dollars. My attorney wrote a demand letter, is there anyway that you guys could borrow the money to pay some interest or something on that?

MACDONALD SR.: Maybe we can.

MACDONALD JR.: You should have, you should have, McDonald talk to him or on that, that is something that I feel we got to do too, on that score. Because I have referred it over to my attorney and he's aware of it, you know I think he's got a call into McDonald, so I think that needs to be worked out between them. Whatever arrangements, whatever suitable arrangements can be made.

BROWN: Yeah, If I had my check books, maybe I could loan you the money.

MACDONALD SR.: I was going to say that. One way of doing it is a new note. Say 50 thousand dollars. I was thinking of that, as matter of fact I was sitting here thinking about it....

Tape of Jan. 7, 1989

Conversation between Bud Brown, Peter MacDonald, Jr. and Peter MacDonald, Sr.

MACDONALD JR.: Well, just hang in there. Have your attorney do your, your job. And if you don't know, say so. If they want to be that way about it, it'll all work out.

BROWN: Yeah, Okay.

MACDONALD SR.: At one time, let's, we might be coming to you for a note for about 50 thousand.

BROWN: All right.

MACDONALD SR.: I'll pay you 25 with interest and then I'll, pay my lawyer with the rest of it.

BROWN: Yeah, Okay, All right.

MACDONALD JR.: Say Merry Christmas and Happy New Year to Carol for us.

BROWN: All right, same to you guys.

MACDONALD JR.: Let's go.

BROWN: All fine. I'm gonna stay here and powder my nose a minute.

MACDONALD JR.: Okay.

BROWN: All right.

MACDONALD JR.: See you later.

BROWN: Okay, Bye.

November 22, 1988
Conversation Between Bud Brown and Peter MacDonald, Sr. (2)

BROWN: Thank you my friend.

MACDONALD SR.: All right, I'll ah let you know, then if I do come tomorrow, maybe ah we can get together. Can I still, ah, I don't know, is there a way you can ah, get some ah, ah those funny golf balls...

BROWN: maybe, maybe we ...

MACDONALD SR.: That ah.

BROWN: Maybe we can play some ... Well I got some in my ah, in my golf bag, yeah.

MACDONALD SR.: That stuff ...

BROWN: Yeah, yeah.

MACDONALD SR.: You know what I mean?

BROWN: Yeah... (inaudible)

Tape of November 22, 1988
Conversation Between Bud Brown and Peter MacDonald, Sr. (3)

MACDONALD, SR.: What they may ask there, these guys, is when and if, probably going to ask, I would, in addition this I would think one thing they would ask is when, if any, did you tell the Chairman or Mr. MacDonald that you were interested in selling the Big Boquillas to the tribe? They will ask you that. And, uh, and, uh, or did you tell him or does he know about it or did you and the Chairman have any conversation on that? They'll ask you that question I'm sure. As sure as I'm sitting here. And you have to come up with an answer. Obviously we can't say that I never did.

BROWN: Right.

MACDONALD, SR.: It won't sound right. Certainly he did, but after I mentioned, it he told me the proper procedure to follow through and at that point he made it, he made a remark, and I agreed with him, that, uh, since he and I are friends that he, that you should do this on your own and not get him involved in any way whatsoever. And, uh, and, uh, and that was it. And also if then they say any other-time after Hawaii did you talk to him? Maybe once or twice somewhere but, uh, but the understanding I remember distinctly was that the Chairman did not want to get involved and I didn't want to get him involved because we were friends and so I just dealt with the people.

BROWN: How does the tribe feel now? What's, are they happy with it and would they sell it for a hundred million dollars?

MACDONALD, SR.: Not a hundred million dollars, no.

BROWN: Yeah.

MACDONALD, SR.: For, for forty million dollars, I told you. Heck, you and I could make some more money on that.

BROWN: Yeah. (Laughing).

Hearings Before the Special Committee on Investigations
Select Committee on Indian Affairs

Statement of Michael P. Upshaw
February 7, 1989

Mr. Chairman, members of the Committee, I appreciate your cooperation in permitting me to submit a statement to this Committee on short notice. However, although I was not present, I understand that very serious allegations were made concerning me by Mr. Bud Brown in his testimony before the Committee this morning. I believe it to be vitally important, both for my personal reputation and the integrity of the Navajo Tribal Government, for me to set the record straight as quickly as possible.

Mr. Chairman, I have several points I want to make. First, and most important, I deny unequivocally that I ever at any time solicited money or other financial assistance from Bud Brown or any other businessman seeking to do business with the Navajo Nation. I specifically deny Mr. Brown's allegation that I requested, in June of 1987, $18,000 for what he called tax problems which I was allegedly having. That testimony by Mr. Brown is absolutely false. Similarly, at no time did I ever discuss with Chairman MacDonald any of my personal financial affairs. I trust that Mr. Brown understands the implications of making such statements in sworn testimony before this Committee. I hope the Committee will take appropriate action.

It is true that, at the end of May, 1987, Mr. Kent Ware, an aide to Chairman MacDonald, requested that I accompany the

Chairman and other Tribal representatives to New York for the purpose of making presentations to certain financial institutions in order to solicit their interest in doing business with the Navajo Nation. Chairman MacDonald's office informed me at that time that my presence was necessary to deal with any questions relating to Navajo law which may come up in the course of the presentations. At that time, I was instructed to meet Chairman MacDonald at the Sawyer Aviation air terminal in Phoenix, Arizona. When I arrived at the air terminal, I found that we were traveling by privately-owned aircraft (which I was informed was being offered for sale to the Navajo Nation) and that the passengers on this aircraft would include myself, Chairman MacDonald, Kent Ware, Peter MacDonald, Jr. and Bud Brown. At that time, I was informed that Bud Brown was coming along to address any questions relating to the proposed Boquillas land transfer.

In New York, we were met by Ed Gabriel, of the Tribal public affairs firm, Carl Rowan, Jr., who was with Milgrim, Thomajan & Lee (one of the Navajo Nation's outside law firms), and Charles Blackwell, a lawyer/liaison from Washington, D.C., who introduced us to the Bank of Japan. During the two days we were in New York, we visited, among others, Thompson McKinnon, Bank of Japan, Paine Webber and Drexel Burnham. At no time during this trip did I have the discussion with Bud Brown described in his testimony this morning.

In fact, Mr. Chairman, there would be no reason for me to seek Mr. Brown's financial assistance. Prior to becoming Navajo

Attorney General in February, 1987, I was in private law practice in Phoenix, Arizona. I consider this practice to have been moderately successful, and in late 1986, I received a substantial legal fee. In March, 1987 I began receiving substantial monthly annuity payments, payable part as lump sum and part as a structured settlement, totaling hundreds of thousands of dollars. In other words, I had financial resources sufficient to meet any income tax liability which I may have had for the prior year 1986 or the then current year, 1987. If the Committee would like, I will make my tax and other financial records available for inspection so that the Committee can verify these statements. Mr. Brown's statements are made all the more ludicrous given the fact that I have never had Federal income tax liability in any single year as high as $18,000.

The simple fact is: I have nothing to hide. I neither sought nor received any improper or even suspicious payments from anyone. I take extreme offense at Mr. Brown's suggestion that I solicited any payment from him, and I wanted to be sure to set the record straight as soon as possible.

Thank you very much for your indulgence in permitting me to make this statement for the record today.

Michael P. Upshaw

Michael P. Upshaw

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

OPENING STATEMENT BY
CHAIRMAN DENNIS DECONCINI
FEBRUARY 8, 1989

THIS MORNING, WE BEGIN OUR INVESTIGATIVE HEARING INTO A NEW TOPIC, INDIAN GAMING. AS YOU ARE WELL AWARE, THE GENERAL TOPIC OF INDIAN GAMING HAS BEEN CLOSELY SCRUTINIZED BY CONGRESS RECENTLY. THROUGH OUR INVESTIGATION, WE HAVE UNCOVERED CERTAIN FACTS THAT WERE NOT AVAILABLE TO US DURING CONGRESS' PAST EXAMINATION OF INDIAN GAMING. TODAY, WE WILL HEAR FROM THREE WITNESSES, WHO WILL DISCUSS THE INVOLVEMENT OF ORGANIZED CRIME, THROUGH OUTSIDE MANAGEMENT COMPANIES, IN INDIAN GAMING OPERATIONS. BY EXAMINING THIS ISSUE NOW, WE WANT TO EMPHASIZE THAT WE DO NOT BELIEVE THAT THE PROBLEMS DISCUSSED TODAY ARE PRESENT IN ALL INDIAN GAMING OPERATIONS. HOWEVER, THE PRESENCE OF **ANY** ORGANIZED CRIME INVOLVEMENT IN INDIAN GAMING CANNOT BE TOLERATED.

ALTHOUGH WE WILL HEAR FROM WITNESSES TODAY, THEIR TESTIMONY WILL NOT COMPLETE OUR INVESTIGATION INTO THIS ISSUE. I WOULD LIKE TO TAKE THIS OPPORTUNITY TO INVITE ANY INDIVIDUAL, TRIBE, OR TRIBAL ENTITY TO PROVIDE TO THE SPECIAL COMMITTEE ANY INFORMATION AND DOCUMENTATION THAT THEY MAY HAVE ABOUT THIS ISSUE FOR USE IN OUR SECOND PHASE OF HEARINGS IN THE SPRING.

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

STATEMENT OF
ANTHONY E. DANIELS
DEPUTY ASSISTANT DIRECTOR
CRIMINAL INVESTIGATIVE DIVISION
FEDERAL BUREAU OF INVESTIGATION
BEFORE THE
SPECIAL COMMITTEE ON INVESTIGATIONS
UNITED STATES SENATE
WASHINGTON, D.C.
FEBRUARY 8, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM HONORED AND PLEASED TO APPEAR BEFORE YOU CONCERNING INFORMATION RELATING TO ORGANIZED CRIME, SPECIFICALLY THE LA COSA NOSTRA'S (LCN) INVOLVEMENT IN INDIAN GAMBLING MATTERS.

THE FBI HAS ATTAINED UNPRECEDENTED SUCCESS AGAINST THE LA COSA NOSTRA IN RECENT YEARS. WITH THE HELP OF INNOVATIVE NEW CONCEPTS SUCH AS QUALITY CASE INVESTIGATIONS, REFINED USE OF THE RACKETEER INFLUENCE AND CORRUPT ORGANIZATION STATUTE, AND THE INCEPTION OF AN ARTICULATED ORGANIZED CRIME NATIONAL STRATEGY, THE BUREAU HAS BEEN ABLE TO EFFECTIVELY INVESTIGATE THE HIGHEST LEVELS OF THE AMERICAN LCN.

THIS COORDINATED EFFORT ADDRESSING THE LCN HAS PROVIDED A MORE COMPREHENSIVE UNDERSTANDING OF THE LCN'S ORGANIZATION, OPERATION, INFLUENCE AND GENERAL NOMENCLATURE; SUCH THAT THE BUREAU'S CAPABILITY OF ADDRESSING THE FUTURE OF ORGANIZED CRIME IN AMERICA IS TREMENDOUSLY ENHANCED.

HISTORICALLY, WHEN MEASURED AGAINST THE CUMULATIVE THREAT THE LCN POSES TO AMERICAN SOCIETY, LCN DIRECT INVOLVEMENT IN INDIAN AFFAIRS HAS BEEN LIMITED. THERE ARE INSTANCES OF LCN CONNECTED GAMBLING OPERATIONS, PRIMARILY BINGO GAMES, ON SOME INDIAN RESERVATIONS. OUR EXPERIENCE SHOWS THAT ALLEGATIONS OF LCN INVOLVEMENT SOMETIMES EXCEED THE ACTUAL FACT. CONVINCINGLY CONNECTING SPECIFIC LCN FIGURES DIRECTLY TO THESE OPERATIONS IS VERY DIFFICULT. THE LCN MEMBERS ARE VERY SOPHISTICATED AND EFFECTIVE IN BEING ABLE TO DISGUISE THEIR DIRECT INVOLVEMENT AND INFLUENCE IN THESE AREAS THROUGH A MYRIAD OF METHODS WHICH CAMOUFLAGE THEM FROM PUBLIC VIEW. THEY HIDE THEIR INTERESTS THROUGH LAYERS OF FRONTED BUSINESSES, COMPLIANT

BUSINESSMEN, AND/OR OTHER SEEMINGLY LEGITIMATE ENTITIES COOPERATING IN THEIR SCHEMES. IN MOST CASES WE SEE "FRONT MEN," THOSE SEEMINGLY LEGITIMATE BUSINESS PEOPLE WORKING AT THE BEHEST OF LCN FIGURES, USUALLY DISGUISED WITHIN A HOST OF PROFESSIONAL SOUNDING "MANAGEMENT" COMPANIES. THESE "FRONT MEN" WILL, IN TURN, EMPLOY OTHERS WHO MAY NOT KNOW OF THE LCN INVOLVEMENT, BUT WHO WILLINGLY PARTICIPATE IN THE SCHEME OR FRAUD WHICH ULTIMATELY WORKS TO THE DETRIMENT OF THE TRIBAL CONCERNS. THESE SO CALLED "MANAGEMENT" COMPANIES ARE EMPLOYED TO MANAGE THE BINGO GAMES AT A PARTICULAR RESERVATION, AND THEN THROUGH SCHEMES AIMED AT SKIMMING PROFITS FROM THE OPERATION, RUN THE PROGRAMS AT EITHER A LOSS OR REDUCED PROFIT MARGIN - ULTIMATELY TO THE DETRIMENT OF THE RESERVATION EMPLOYING THEM OR UTILIZING THEIR EXPERTISE. THROUGH MANAGEMENT FEES, SHILL PLAYERS, CONTESTS, AND A HOST OF OTHER SCAMS, THE MANAGEMENT FIRMS END UP WITH THE GREATEST PERCENTAGE OF MONEY GENERATED BY THESE EVENTS.

ONE EXAMPLE INVOLVES AN LCN GROUP IN FLORIDA. THIS GROUP BECAME INVOLVED IN ATTEMPTS TO CONTROL BINGO OPERATIONS ON SOME SEMINOLE INDIAN RESERVATIONS IN FLORIDA DURING THE LATE 70'S AND EARLY 80'S. INITIAL EFFORTS BY SOME SEMINOLE TRIBE MEMBERS TO ACQUIRE FINANCING TO START A BINGO OPERATION ON THEIR RESERVATION DREW THE LCN'S ATTENTION. THEY ULTIMATELY BECAME INVOLVED THROUGH THE PARTICIPATION OF A FEW BUSINESS "ASSOCIATES," WHO WERE KNOWLEDGEABLE OF, AND INVOLVED IN, INDIAN GAMING MATTERS ON RESERVATIONS. THESE ASSOCIATES BECAME THE "FRONT MEN" FOR THIS LCN GROUP'S INVOLVEMENT IN INDIAN BINGO GAMES IN FLORIDA.

THESE "FRONT MEN" OPERATED WITHIN THE GUISE OF A HOST OF "MANAGEMENT" COMPANIES WITH NAMES WHICH WOULD SOUND LEGITIMATE AND PROFESSIONAL TO ANY UNSUSPECTING TRIBAL LEADER OR GROUP. THIS MIAMI-BASED LCN GROUP FOUND WILLING PARTICIPANTS IN THEIR EVENTUAL SCHEMES AMONG CORRUPT TRIBAL LEADERS, OR GROUPS RESPONSIBLE FOR TRIBAL AFFAIRS. ACTUAL ATTEMPTS WERE MADE TO EXPAND THEIR INFLUENCE ON THE RESERVATIONS INTO AREAS OF VENDING, NIGHT CLUBS AND A POTENTIAL CASINO OPERATION. THE MIAMI LCN GROUP ALSO ACQUIRED DIRECT INTERESTS IN THE MANUFACTURING AND SALES OF BINGO SUPPLIES AND ACCOUTERMENTS TO INDIAN RESERVATIONS NATIONALLY. FBI SUCCESSES AGAINST THIS LCN GROUP IN AREAS DIVORCED FROM INDIAN AFFAIRS, HAVE INADVERTENTLY CAUSED THEM TO REDUCE THEIR INTEREST IN INDIAN BINGO OPERATIONS AT THIS TIME, HOWEVER, THE POTENTIAL FOR FURTHER LCN INVOLVEMENT REMAINS INTACT. IT IS ANTICIPATED THAT THIS AREA OF INFILTRATION BY THE LCN IS CONTINUING AND WILL INCREASE AS TIME GOES ON.

UP UNTIL RECENTLY, WITH THE EXCEPTION OF THE EXAMPLE JUST MENTIONED, MOST OF THE AVAILABLE EXAMPLES OF LCN INFLUENCE IN INDIAN BINGO GAMES HAVE BEEN ISOLATED, INDIVIDUAL, ATTEMPTS BY LCN ASSOCIATES TO TAKE ADVANTAGE OF VARIOUS OPPORTUNITIES CERTAIN BINGO OPERATIONS MAY HAVE PRESENTED. WE HAVE HAD BOTH VERIFIED AND ALLEGED ACTS OF INVOLVEMENT BY MEMBERS AND ASSOCIATES OF VARIOUS LCN FACTIONS FROM A NUMBER OF CITIES THROUGHOUT THE UNITED STATES. WITH THE EXCEPTION OF THE LCN OPERATION IN MIAMI, NONE OF THE OTHER PAST CASES EVER MATERIALIZED TO WHAT I'D CONSIDER A SUBSTANTIAL AND CONSISTENT THREAT. THAT COULD CHANGE, HOWEVER, AS CONDITIONS DEVELOP WHICH MIGHT CREATE GREATER MONEY MAKING PROSPECTS FOR THE LCN. RECENT LEGISLATION ENABLING INDIAN RESERVATIONS TO REGULATE THEIR OWN GAMBLING OR GAMING OPERATIONS IN CONJUNCTION WITH WHATEVER IS ALLOWED WITHIN THEIR STATE IS A SITUATION WHICH, WHEN GIVEN THE GENERAL HISTORY, NATURE AND APTITUDE OF LCN ORGANIZATIONS, WILL UNDOUBTEDLY BECOME AN AREA FOR GREATER INFILTRATION. ANY FORM OF HIGH STAKES GAMBLING SEEMS TO BE A MAGNET TO THE LCN. WHENEVER OR WHEREVER THERE ARE SITUATIONS WHICH GENERATE LARGE VOLUMES OF CASH, THE LCN WILL MOST ASSUREDLY ATTEMPT AN APPROACH.

REGULATION AND MONITORING OF HIGH STAKES GAMBLING OPERATIONS IS ONLY PART OF THE ANSWER. THE VIGILANCE AND DILIGENCE REQUIRED TO EFFECTIVELY STOP ORGANIZED CRIME INFLUENCE MUST GO BEYOND THE CASINOS, RACETRACKS, BINGO GAMES, AND OUT TO THE SURROUNDING ENVIRONMENT. LABOR UNIONS, SERVICE INDUSTRIES, CONSTRUCTION COMPANIES, TRANSPORTATION BUSINESSES, FINANCIAL ENTITIES, ALL CONTAIN THE POTENTIAL FOR PROBABLE LCN ATTEMPTS TO INFILTRATE AND ULTIMATELY INFLUENCE OR CONTROL THE SYSTEM. BRIBERY, EXTORTION, LOANSHARKING, MONEY LAUNDERING, MURDER, LABOR RACKETEERING, PROSTITUTION, DRUGS, AND THE LIST GOES ON IN TERMS OF TOOLS AND WEAPONS USED BY ORGANIZED CRIME TO EXERT THEIR INFLUENCE. EVEN IN ATLANTIC CITY WHERE THE GAMBLING CASINOS ARE CLOSELY SCRUTINIZED THROUGH A NUMBER OF REGULATORY AND INVESTIGATIVE AGENCIES, THE SPECTRE OF ORGANIZED CRIME HOVERS AROUND, EVER PRESENT IN A NUMBER OF ANCILLARY INDUSTRIES AND AREAS WHICH IMPACT DIRECTLY ON THE GAMBLING PROCESS. WE MUST ALSO CONSIDER THE OTHER CRIME PROBLEMS WHICH ARE ENDEMIC TO THE

CULTURE AND DYNAMICS OF HIGH STAKES GAMBLING. WITH ANY SUBSTANTIAL INTRODUCTION OF HIGH STAKES GAMBLING INTO ANY SPECIFIC LOCATION, THERE WILL BE A SIGNIFICANT INCREASE IN ALL THE CATEGORIES OF THE ANCILLARY CRIMES OF VIOLENCE AND GENERAL PROPERTY TYPE CRIMES.

THE FBI COMPILES STATISTICS ON THESE CRIMES AND THEY ARE TABULATED IN OUR UNIFORMED CRIME REPORTING INDEX. THE INDEX INCLUDES THOSE CRIMES OF MURDER, RAPE, ROBBERY, AGGRAVATED ASSAULT, BURGLARY, LARCENY-THEFT, AND MOTOR VEHICLE THEFT. THESE CRIMES ARE COMPILED AND FORMULATED TO AN INDEX ON THE NUMBER OF OFFENSES PER A 100,000 INHABITANT STANDARD.

BETWEEN 1975 AND 1977, THE YEARLY CRIME INDEX FOR ATLANTIC CITY REMAINED LEVEL AND CONSISTENT AT APPROXIMATELY 10,000 TO 11,500 OFFENSES PER 100,000 POPULATION. THE FIRST CASINO OPENED IN ATLANTIC CITY IN 1978 AND WE SAW A DEFINITIVE INCREASE IN THE INDEX TO A RATE OF OVER 12,000 PER 100,000 INHABITANTS AND IN 1979, WHEN THERE WERE THREE CASINOS IN OPERATION, A 25 PERCENT JUMP IN THE INDEX TO OVER 16,000 PER 100,000 PEOPLE. IN 1980, THREE MORE CASINOS OPENED, AND THE INDEX DOUBLED TO OVER 30,000 PER 100,000 INHABITANTS. THE INDEX RATE CONTINUED TO RISE EACH YEAR UNTIL 1984, AND THEN LEVELLED OFF TO ITS CURRENT (1987) RATE OF 38,000 PER 100,000 INHABITANTS. JUST FOR COMPARISON PURPOSES, IN 1980, ORLANDO, FLORIDA, WITH THE ANCILLARY TRANSIENT POPULATION DRAW OF WALT DISNEY WORLD, HAD A CRIME INDEX OF 13,717 PER 100,000 POPULATION. ATLANTIC CITY IN 1980 HAD A CRIME INDEX OF OVER 30,000 PER 100,000. SO YOU CAN SEE HOW HIGH STAKES GAMBLING SEEMS TO ENGENDER A FORMIDABLE CHALLENGE IN THE AREA OF GENERAL CRIME AS WELL AS ORGANIZED

CRIME. COUPLE THIS WITH THE EXPERIENCE WHICH TEACHES US THAT THE TRADITIONAL BASIC CRIMINAL INVESTIGATIVE PROCEDURES ARE NOT ADEQUATE TO DEAL WITH THE SOPHISTICATION AND INSULATION ENJOYED BY MAJOR ORGANIZED CRIME FIGURES, AND YOU CAN SEE HOW THE LCN CAN FUNCTION ALMOST INVISIBLY. ALL OF THE SUCCESSFUL CASES CONCLUDED BY THE FBI AGAINST THE LCN HAVE REQUIRED GREATLY ENLARGED MANPOWER AND EQUIPMENT NEEDS WHICH MAKE ORGANIZED CRIME INVESTIGATIONS SO DEMANDING. THIS DEMAND IS INCREASING DUE TO THE INCREASED ACTIVITY AND INFLUENCE BY OTHER ORGANIZED CRIME GROUPS IN THIS COUNTRY. ASIAN ORGANIZED [redacted] GROUPS ARE A MATTER OF INCREASING CONCERN AND SCRUTINY BY THE BUREAU. COLOMBIAN DRUG CARTELS AND THEIR QUEST OF MONEY LAUNDERING OPERATIONS, ALONG WITH A HOST OF OTHER DEVELOPING CRIMINAL GROUPS ARE MATTERS FOR CONCERN IN ALL AREAS INCLUDING, POTENTIALLY, MATTERS OF CONCERN BEFORE THIS COMMITTEE.

REGARDLESS OF THESE CIRCUMSTANCES, HOWEVER, IT CAN BE ASSURED THAT ANYWHERE THAT ORGANIZED CRIME NEEDS TO BE ADDRESSED, WHETHER IT IS IN MID-TOWN MANHATTAN, OR SOME REMOTE WESTERN INDIAN RESERVATION, THE BUREAU CONTINUES TO RANK IT AS A TOP PRIORITY PROGRAM AND IT WILL RECEIVE THE SAME DEDICATED AND PRODIGIOUS EFFORT WHICH IS INDICATIVE OF THE BUREAU'S INVESTIGATIVE ABILITY.

GENTLEMEN, THIS CONCLUDES MY OPENING STATEMENT AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS THAT YOU MAY HAVE.

HIGH STAKES BINGO ON INDIAN RESERVATIONS IN CALIFORNIA

by BOB MOREHOUSE, ADMINISTRATOR
CALIFORNIA ATTORNEY GENERAL'S OFFICE

California has the largest number of Indian bingo operations in the United States. Of the approximately 101 reservations in California, there are presently 27 involved in operating, or planning to operate, Indian bingo games. These bingo games are lucrative, profit-generating big businesses that make an enormous amount of money. In 1987 alone, it was estimated by the Bureau of Indian Affairs (BIA) that these operations grossed well in excess of $106 million annually. Interestingly, these figures were estimated from only 17 Indian tribes reporting gross revenues. There is no requirement that these operations have to report their earnings.

In California high stakes bingo has remained popular with the Indian tribes because of the opportunity to cash in on the hugh gambling profits. These bingo revenues have enabled many of the tribes a chance to improve the living conditions of their people, for example, providing jobs, health care facilities, and schooling.

Local California law enforcement became increasingly aware of complaints of criminal activities occurring at some of the high stakes bingo operations. The majority of these complaints involved outside management company operators who had contracted with the Indians to run their bingo operations. Reports of missing money, skimming, rigged games, and law suits involving contract disputes became more common. Many times this resulted in closing the bingo operation until a new management company could be found. The Rincon (San Diego County) and the Soboba (Riverside County) have had at least three different management companies.

High stakes bingo games operating on Indian reservations in California have attracted a small number of individuals who have been linked to organized crime or involved in disreputable bingo operations. The primary law enforcement concern is that the management of the bingo operations will be infiltrated by individuals who will skim profits and launder money.

I would like to summarize some of these operations that have taken place on Indian reservations in California.

BARONA RESERVATION (SAN DIEGO COUNTY)

The Reservation of the Barona Group of Capitan Grande Band of Mission Indians is located near Lakeside California in San Diego County and has over 5,000 acres. The tribe consists of approximately 440 Indians living on the Reservation.

Stewart Siegel became the General Manager of the Barona Indian bingo operation (one of California's largest) in October 1984. He was employed by American Management and Amusement Inc., a Los Angeles based corporation which did oversee the bingo operations of the Barona Indians under a joint venture agreement.

Siegel and his assistant, Joseph Catania, were involved in a scheme to rig bingo games at the Barona Reservation. They devised a scheme which involved getting a shill to play pre-arranged winning numbers. The winner then received the winnings in cash and checks which were turned over to Siegel. An associate of Siegel, Louis Cordileone, was also involved in the scheme, and hired his girlfriend to act as the shill player in a rigged bingo game at the Barona operation.

Siegel's case was prosecuted by the California Attorney General's Special Prosecutions Unit. In April 1986 Siegel pled guilty to four counts of grand theft admitting he had stolen $96,000 from the Barona operation. Stewart Siegel was sentenced to one year in jail and a $500 fine. Joseph Catania pled guilty to grand theft admitting that he received between $1300 and $1600 for his part in the scheme directed by Siegel. Louis Cordileone was placed on three years probation after pleading guilty to being an accessory to arranging the perjury committed by his girlfriend. According to the probation report his girlfriend had won $34,000 illegally from a rigged bingo game. She denied using any illegal means to do so when she testified before a Grand Jury in 1986. She later was granted immunity from prosecution and testified that Cordileone directed her to lie about the games.

CABAZON BAND OF MISSION INDIANS (RIVERSIDE COUNTY)

The Cabazon Reservation is located in Riverside County near Indio, California and has approximately 1700 acres of land. In 1981 the Cabazon Tribe consisted of approximately 25 members with only 6 members actually living on the reservation.

John Philip Nichols came to the Cabazon Reservation in 1978 and brought his family with him to take part in the tribal administration. Nichols outlined a plan to transform an inactive tribe with meager holdings into an economically independent entity.

A tax-free cigarette store was the first enterprise but failed after the U.S. Supreme Court ruled that goods must be taxed. A discount liquor business also failed. In October 1980, the Cabazons established the Cabazon Indian Casino, one of the few cardrooms between Los Angeles and Nevada.

Nichols hired Rocco Zangari, a Southern California Organized Crime figure, to operate the cardroom. According to court documents Zangari was later fired by the Tribe for alleged wrong doings in financial dealings. Zangari, in turn, accused John Philip Nichols of similar complaints. Zangari is currently serving 5 years probation after pleading guilty to extortion charges in 1988. This casino went bankrupt in 1981.

In approximately May 1981, Tribal Vice Chairman Alfred Alvarez who was a security chief at the Cabazon Cardroom, began to have doubts and publically criticized the Cabazon management. According to Alvarez's sister, Alvarez believed that money was being skimmed from the cardroom and told local newspapers that his life was in danger. Alvarez was removed as a Tribal Vice Chairman.

Alvarez and two others decided to consult a lawyer about filing a suit to open the Casino's books. On July 2, 1981, Alvarez and two others who were non-Indians, were found dead. The three had been shot in the head with a .38 caliber revolver the evening before. This case has never been solved.

In 1983, the Cabazons opened their Bingo Palace operation. - The Riverside Sheriff's Department had attempted to shut dopwn the Cabazon and Morongo Indian gaming operations after declaring them illegal. These operations were subsequently reopened after a court ruling declaring that California law does not extend to bingo operations on Indian lands.

In May 1985, Tribal Administrator John Philip Nichols pled "no contest" to two charges of solicitation for murder. None of the intended victims were harmed in this case because Nichols had solicited two individuals who were working undercover for the Indio Police Department to commit these murders. Nichols was sentenced to four years in prison on these charges.

JACKSON RANCHERIA (AMADOR COUNTY)

The Jackson Rancheria is located in Amador County just east of Sacramento, California and has over 330 acres. The Tribe consists of approximately 20 members living on the reservation.

The vunerability of bingo operations on Indian reservations to organized crime infiltration is exemplified by the following case.

I would like to summarize by reading into the record information contained in a "sentencing memorandum" of James L. Williams, and also information from other public documents.

In July 1985, Williams traveled to the Sacramento, California area to look into the possibility of opening up a bingo operation on an Indian reservation. In mid-1985 Williams and several others became involved in a large bingo operation of the Mi-Wuk Indian Tribe in Amador County at the Jackson Rancheria. Williams and his group used the name of Arrow Management Services Company. They approached a local investor and offered him $300,000 plus 4.5% of total net profits to become involved in this operation. A partnership was formed between this management services company and the investor. They entered into a management agreement to operate bingo games with the Indian tribe.

The investor filed a lawsuit which alleged civil fraud, civil RICO violations (skimming from bingo hall, embezzlement, and worthless check violations.

Information in the "sentencing memorandum" links Williams with Anthony Accetturo who is a caporegime in the Luchese organized crime family, and the late Ettore Zappi a former caporegime, in the Gambino organized crime family.

The records also refer to Williams' involvement in bingo halls in Tennessee and South Carolina, and attempts to sponsor bingo in other states.

Williams was convicted in January 1987 of federal tax violations that directly related to his bingo operations in Florida. He was sentenced to 4 years and fined $25,000.

Tribal Bingo Operations vs. Management Company Operations

Typically Tribal run Indian bingo operations in most cases appear to be smaller than the ones ran by management companies, and do not attract large numbers of patrons. Thus, the revenue is much less than that derived by the management companies. Management companies, because of the large amount of bingo revenues derived from bingo operations, are able to advertise and thus draw larger numbers of patrons.

Additionally, many of the smaller Indian bingo operations do not bus people to their bingo games in contrast to the larger operations.

It appears from the reports that we receive that there are fewer complaints about tribal bingo operations than there are concerning those managed by outside companies.

Current Indian Gaming Operations in California

High stakes bingo on Indian reservations in California remains to be popular with Indian tribes because of the enormous amount of profits derived from these operations.

There has been an increase in some varying types of bingo games, such as French Bingo (betting on certain bingo numbers) at the Cabazon Reservation and Decision and Carousel Bingo at the Barona Reservation. These new games increase the percentage of profit for the bingo operations through a type of betting system. Additionally, because they are shortened versions of regular bingo, the new versions allow more games to be played in the same time as regular bingo.

Some Indian bingo reservations in neighboring states offer electronic video bingo, video black jack and an increasing variety of other types of electronic gaming devices. It is anticipated that Indian management promoters in California may follow the trend set by out-of-state reservations and also attempt to offer these new electronic games. In California there have been a number of civil suits and requests for Attorney General opinions on video gambling and electronic bingo devices. The concluding outcome of these opinions is that they are not legal in California. Law enforcement authorities, already concerned with an increase in Indian gambling activities, report that electronic systems makes monitoring of gambling even more difficult.

Summary

Local law enforcement agencies and the California Attorney General's Office continue to respond to complaints of criminal activity at bingo operations on Indian reservations.

The 1987 U. S. Supreme Court decision California v. Cabazon Band of Mission Indians, et al ruled in favor of the Indians that bingo games on Indian lands are not subject to state or local regulation.

Although this decision placed law enforcement into a reactive role of only responding to complaints of criminal activity, law enforcement remains concerned about these high stakes bingo operations. They are concerned that the lucrative nature of high stakes bingo and the absence of adequate regulatory control will increase the potential for infiltration by organized crime and other illegal activities.

Department of Justice

STATEMENT OF

PHILIP HOGEN
UNITED STATES ATTORNEY
DISTRICT OF SOUTH DAKOTA

WILLIAM LUTZ
UNITED STATES ATTORNEY
DISTRICT OF NEW MEXICO

STEPHEN McNAMEE
UNITED STATES ATTORNEY
DISTRICT OF ARIZONA

WILLIAM PRICE
UNITED STATES ATTORNEY
WESTERN DISTRICT OF OKLAHOMA

RICHARD STACY
UNITED STATES ATTORNEY
DISTRICT OF WYOMING

BEFORE THE

SPECIAL COMMITTEE ON INVESTIGATIONS OF

THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, D.C.

FEBRUARY 8, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

IT IS A PRIVILEGE FOR US TO BE HERE TODAY TO EXPRESS OUR VIEWS AND EXPERIENCES CONCERNING THE INVESTIGATION AND PROSECUTION OF CASES WITHIN INDIAN COUNTRY, ESPECIALLY THOSE INVOLVING FRAUD, CORRUPTION AND WHITE COLLAR CRIMES.

SEVERAL OF US HAVE TESTIFIED EITHER BEFORE THIS COMMITTEE AT HEARINGS HELD THROUGHOUT THE UNITED STATES OR THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS ABOUT SPECIFIC TOPICS OF LAW ENFORCEMENT AND PROSECUTION WITHIN INDIAN COUNTRY. IN ADDITION TO OUR TESTIMONY HERE TODAY, WE ARE SUBMITTING FOR THE RECORD COPIES OF OUR PREVIOUS STATEMENTS BEFORE THOSE COMMITTEES. ALTHOUGH THIS IS A JOINT STATEMENT, MR. STACY MAY SUBMIT AN ADDITIONAL INDEPENDENT STATEMENT THAT RELATES SPECIFICALLY TO HIS JURISDICTION.

INVESTIGATION AND PROSECUTION OF WHITE COLLAR CRIME, TRIBAL CORRUPTION AND FRAUD

WITH INCREASING FREQUENCY WE ARE CALLED UPON TO INVESTIGATE ALLEGATIONS OF THE MISUSE OR EMBEZZLEMENT OF TRIBAL FUNDS, THE "BRIBING" OF TRIBAL OFFICIALS IN ORDER TO OBTAIN TRIBAL CONTRACTS, AND A MYRIAD OF SCHEMES BEING CONCOCTED BY INDIVIDUALS TO OBTAIN TRIBAL FUNDS.

ONE OF THE MOST FRUSTRATING ASPECTS IN THE INVESTIGATIONS OF THESE CRIMES ARE THE APPARENT GAPS IN FEDERAL STATUTES, ESPECIALLY THOSE THAT SPECIFICALLY RELATE TO THE CONDUCT OF TRIBAL OFFICIALS ACTING IN THEIR OFFICIAL CAPACITIES. TRADITIONALLY, FEDERAL PROSECUTORS HAVE UTILIZED 18 U.S.C. 1341

(MAIL FRAUD), 18 U.S.C. 1343 (WIRE FRAUD), AND 18 U.S.C. 1951 (THE HOBBS ACT), IN PROSECUTING MAJOR WHITE COLLAR FRAUDS WHICH ALSO INCLUDE THOSE CRIMES COMMITTED BY PUBLIC OFFICIALS. FEDERAL PUBLIC OFFICIALS ARE ALSO SUBJECT TO INVESTIGATION AND PROSECUTION FOR A WHOLE HOST OF ACTIVITIES WHICH ARE GENERALLY CONSIDERED BRIBERY AND CONTAINED IN 18 U.S.C. 201, ET SEQ. HOWEVER, WHEN THERE ARE ALLEGATIONS THAT A TRIBAL OFFICIAL HAS ACTED IMPROPERLY, THERE ARE LIMITED STATUTES WITH NARROW APPLICATION THAT SPECIFICALLY ADDRESS THE MISUSE OF A TRIBAL OFFICE.

ALTHOUGH 18 U.S.C. 1163, EMBEZZLEMENT AND THEFT FROM TRIBAL ORGANIZATIONS, HAS BEEN AVAILABLE, THE ENACTMENT OF 18 U.S.C. 666, AS AMENDED, WAS AN ATTEMPT TO PROVIDE A JURISDICTIONAL BASIS THAT WOULD PROVIDE FOR THE INVESTIGATION AND PROSECUTION OF ANYONE WHO CORRUPTLY SOLICITS, ACCEPTS OR OFFERS SOMETHING OF VALUE TO INFLUENCE OR TO OBTAIN REWARD FROM A TRIBAL ACTIVITY PROVIDED THAT THE MONETARY JURISDICTIONAL THRESHOLD IS MET. AT FIRST APPEARANCE, THIS STATUTE APPEARS TO CONTAIN A BROAD JURISDICTIONAL PREDICATE. THERE ARE, HOWEVER, SERIOUS QUESTIONS REGARDING THE APPLICATION OF THIS STATUTE.

18 U.S.C. 666 DOES NOT PER SE PRECLUDE THE TRIBAL OFFICIAL FROM HAVING A FINANCIAL INTEREST IN A CONTRACT WITH THE TRIBE FOR GOODS AND SERVICES. WHILE WE BELIEVE IT WAS THE INTENT OF 18 U.S.C. 666 TO PROHIBIT THE RECEIVING OF "GRATUITIES" BY TRIBAL OFFICIALS FOR THE PURPOSE OF CURRYING FAVOR FOR FUTURE ACTS, THAT INTERPRETATION IS STILL OPEN FOR JUDICIAL INTERPRETATION. THUS,

EVEN IF THE COURTS FIND THAT 18 U.S.C. 666 INCLUDES GRATUITIES, THERE WILL STILL BE PROBLEMS WITH THE ENFORCEMENT OF THE STATUTE. FOR EXAMPLE, IN CASES WHEN THE GRATUITY GIVEN IS FOR FUTURE CONSIDERATION, THERE IS ALWAYS DIFFICULTY IN ESTABLISHING THE "NEXUS" BETWEEN ONE GIFT AND THE OFFICIAL ACT.

CONGRESS HAS ENACTED LAWS CONTROLLING FEDERAL ELECTION CAMPAIGN FINANCING AND REPORTING REQUIREMENTS, BUT THERE ARE NO FEDERAL STATUTES LIMITING OR REQUIRING DISCLOSURE OF CAMPAIGN CONTRIBUTIONS TO ELECTED TRIBAL OFFICIALS. AS A RESULT, TRIBAL OFFICIALS ARE ABLE TO SOLICIT LARGE CAMPAIGN CONTRIBUTIONS WHICH CAN BE CONVERTED TO PERSONAL USE, PROVIDED THAT THE TAXES ARE PAID ON THE FUNDS, WITHOUT VIOLATING ANY FEDERAL OR TRIBAL ORDINANCES. THIS ENABLES A TRIBAL OFFICIAL TO ACCEPT LARGE AMOUNTS OF MONEY AND CIRCUMVENT 18 U.S.C. 666 AND 18 U.S.C. 1951.

IT IS UNCLEAR WHETHER 18 U.S.C. 1951, THE HOBBS ACT, EXTENDS TO TRIBAL OFFICIALS. THERE ARE NO APPELLATE COURT RULINGS ON THIS ISSUE BUT ACTIONS TAKEN "UNDER COLOR OF OFFICIAL RIGHT," 18 U.S.C. 1951(b)(2), SEEM TO INCLUDE ACTS BY VIRTUE OF ONE'S OFFICIAL POSITION. IF THE FACTS MERIT A TRIBAL OFFICIAL BEING CHARGED UNDER 18 U.S.C. 1951, THE ARGUMENT HAS BEEN ADVANCED THAT SPECIFIC STATUTES REFERRING TO TRIBAL LEADERS AND ORGANIZATIONS ARE PRE-EMPTIVE AND THAT THE MORE GENERAL "TO WHOEVER" STATUTES, LIKE THE HOBBS ACT, DO NOT APPLY. WHILE THERE IS CASE LAW TO THE CONTRARY ON THIS PRE-EMPTIVE ISSUE, UNTIL APPELLATE COURTS RULE, THERE IS ALWAYS A DANGER THAT A MAJOR INVESTIGATION IS IN PERIL OF BEING DISMISSED.

IN THE RECENTLY ENACTED MCNALLY LEGISLATION, 18 U.S.C. 1346, CONGRESS AMENDED THE MAIL FRAUD STATUTE TO INCLUDE SCHEMES AND ARTIFICES TO "DEPRIVE ANOTHER OF THE INTANGIBLE RIGHT OF HONEST SERVICES." OSTENSIBLY THIS LANGUAGE IS BROAD ENOUGH TO REACH TRIBAL OFFICIALS, BUT INDIVIDUALS CAN ONLY BE PROSECUTED FOR THIS PART OF THE MAIL FRAUD STATUTES FOR ACTS THAT HAVE OCCURRED AFTER NOVEMBER 18, 1988. OF COURSE, THE MAIL FRAUD STATUTES WERE ALWAYS AVAILABLE TO PROSECUTE FRAUDS INVOLVING PROPERTY RIGHTS.

18 U.S.C. 208, THE FEDERAL CONFLICT OF INTEREST STATUTE, DOES NOT APPLY TO TRIBAL OFFICIALS. NOR DO WE BELIEVE THAT THE RECENTLY ENACTED 18 U.S.C. 1346 REACHES ALL OF THE CONFLICT OF INTEREST CASES. THUS, IT IS POSSIBLE FOR A TRIBE TO AWARD A CONTRACT TO A GROUP OR ENTITY WHEN A TRIBAL OFFICIAL HAS A SIGNIFICANT FINANCIAL INTEREST WITHOUT VIOLATING ANY FEDERAL STATUTE. THERE ARE TRIBAL ORDINANCES THAT PROHIBIT CONFLICTS OF INTEREST. THE PENALTIES COULD BE REMOVAL FROM OFFICE OR MINOR CRIMINAL SANCTIONS WHICH ARE PURSUED IN TRIBAL COURT BUT THERE IS NO SPECIFIC FEDERAL STATUTE ADDRESSING THIS PROBLEM.

THE MAIL FRAUD AND WIRE FRAUD STATUTES ARE STILL AVAILABLE FOR THE PROSECUTION OF WHITE COLLAR CRIMES. SOPHISTICATED CRIMINALS, HOWEVER, KNOW HOW TO AVOID THE APPLICATION OF THESE STATUTES. FOR INSTANCE, THEY USE A SEPARATE PRIVATE DELIVERY SERVICE FOR RECEIPT OF THE MONEY OR THE MONEY IS TRANSFERRED IN PAPER BAGS WITHOUT GOING THROUGH THE MAIL, ETC. THESE CASES ARE EXTREMELY DIFFICULT TO INVESTIGATE AND PROSECUTE. OFTEN THESE CASES INVOLVE ONE-ON-ONE MEETINGS AND, WHEN THE QUID PRO QUO IS

CASH, THERE IS NO PAPER TRAIL SHOWING FROM WHERE THE MONEY CAME OR WHERE IT WENT. EVEN WHEN THERE IS A PAPER TRAIL, IT IS DIFFICULT TO ESTABLISH THE "NEXUS" BETWEEN THE GIFT OR MONEY AND THE INFLUENCE TO BE EXERTED.

SIGNIFICANT FUNDS FROM THE FEDERAL GOVERNMENT AND PRIVATE CONTRACTS FLOWING INTO TRIBAL ORGANIZATIONS MAKE THEM RIPE FOR PREDATORS WHO SEEK TO AVAIL THEMSELVES OF THESE FUNDS. THESE PROBLEMS ARE COMPOUNDED BECAUSE THERE ARE FEW RESTRICTIONS ON THE EXPENDITURES AND ACCOUNTABILITY FOR THE FUNDS.

MANY OF US HAVE HAD TO DECLINE CASES WHEN TRIBAL ORGANIZATIONS WERE SHORTED ON CONTRACTS OR WHEN MONEY HAS DISAPPEARED THROUGH A SERIES OF TRANSACTIONS. THE BASIS FOR THE DECLINATION IS THAT THERE ARE INSUFFICIENT ORGANIZATIONAL RECORDS TO ESTABLISH THE SHORTAGES OR TRACK THE FUNDS. IT WOULD REQUIRE UNIFORM STANDARDS FOR RECORD-KEEPING TO ENSURE ACCOUNTABILITY.

THE UNIQUE STRUCTURE OF TRIBAL GOVERNMENT, WHICH NORMALLY CONCENTRATES AUTHORITY IN RELATIVELY FEW TRIBAL LEADERS, INCREASES THE LIKELIHOOD OF CORRUPTION AND MAKES THE DETECTION OF CORRUPTION DIFFICULT WITHOUT TRADITIONAL CHECKS AND BALANCES OVER THE ACCESS TO TRIBAL FUNDS. THOSE TRIBAL OFFICIALS WHO ARE CORRUPT FIND IT RELATIVELY EASY TO USE THE FUNDS IMPROPERLY. THE SAME TRIBAL STRUCTURE ALSO CONTRIBUTES TO DIFFICULTIES IN ENFORCING TRIBAL COMPLIANCE WITH THE INDIAN CIVIL RIGHTS ACT, 25 U.S.C. 1301 ET SEQ. THAT ACT PROTECTS INDIVIDUALS BY RESTRICTING TRIBES IN MANY OF THE SAME WAYS AS THE BILL OF RIGHTS LIMITS STATE AND FEDERAL ACTION. THE LACK OF A FULLY INDEPENDENT

TRIBAL COURT SYSTEM MAY BE ONE FACTOR THAT CAN IMPEDE THE EFFECTIVE REVIEW OF THE ACTIONS OF TRIBAL GOVERNMENT.

CONTRACT FOR CRIMINAL INVESTIGATION PURSUANT TO PUBLIC LAW 93-638

PURSUANT TO PUBLIC LAW 93-638, TRIBAL POLICE DEPARTMENTS ARE REPLACING THE BUREAU OF INDIAN AFFAIRS AS THE PRINCIPAL INVESTIGATIVE AGENCIES FOR VARIOUS CRIMES OCCURRING WITHIN INDIAN COUNTRY. UNITED STATES ATTORNEYS HAVE TRADITIONALLY ENCOURAGED THE ENHANCED TRAINING OF TRIBAL POLICE OFFICERS AND THEIR PARTICIPATION WITH THE FEDERAL BUREAU OF INVESTIGATION AND BUREAU OF INDIAN AFFAIRS AS PART OF TEAMS INVESTIGATING MAJOR CRIMES WITHIN INDIAN COUNTRY. OUR LAW ENFORCEMENT COORDINATING COMMITTEES (LECC'S) INCLUDE TRIBAL POLICE DEPARTMENTS AND ORGANIZATIONS. OUR LECC PROGRAMS ARE DESIGNED TO PROMOTE BETTER COOPERATION AMONG FEDERAL, STATE, LOCAL AND TRIBAL AGENCIES ON SUCH ISSUES AS TRIBAL JURISDICTION, CROSS-DESIGNATION AND MULTI-JURISDICTIONAL TASK FORCES, AS WELL AS INTER-AGENCY TRAINING.

AS UNITED STATES ATTORNEYS, WE ARE NOT CONCERNED WITH THE PRINCIPLE OF CONTRACTING CRIMINAL INVESTIGATION SERVICES. CONGRESS HAS DETERMINED THAT SUCH SERVICES WILL BE CONTRACTED IN ACCORDANCE WITH THE REQUIREMENTS OF PUBLIC LAW 93-638. HOWEVER, THE CONTRACT NEGOTIATED UNDER THIS LAW MUST BE STRUCTURED TO IMPROVE LAW ENFORCEMENT SERVICES OR AT LEAST MAINTAIN THE STATUS QUO. CONTRACTS MUST ENSURE THAT THERE WILL BE AN ORDERLY TRANSITION WHEN THE BUREAU OF INDIAN AFFAIRS TRANSFERS ITS CRIMINAL INVESTIGATION RESPONSIBILITIES. THE CONTRACTS MUST BE DRAFTED TO

ENSURE THAT LAW ENFORCEMENT WILL NOT BE SUBJECTED TO POLITICAL PRESSURES WITHIN THE TRIBAL ORGANIZATION. THE CONTRACTS SHOULD PROVIDE FOR TRAINING ADEQUATE TO MEET FEDERAL STANDARDS PRIOR TO TRANSFER OF RESPONSIBILITIES.

AN EXAMPLE OF THE PRACTICAL DIFFICULTIES IN IMPLEMENTING A "638 CONTRACT" CAN BE ILLUSTRATED BY THE NAVAJO CONTRACT. THE CONTRACT DEALING WITH INVESTIGATIVE SERVICES ON THE NAVAJO RESERVATION WAS SIGNED SHORTLY BEFORE CHRISTMAS IN 1988. THE CONTRACT BECAME EFFECTIVE ON JANUARY 1, 1989.

ON DECEMBER 29, 1988, REPRESENTATIVES OF THE UNITED STATES ATTORNEYS' OFFICES FROM NEW MEXICO, UTAH, AND ARIZONA MET IN PHOENIX WITH REPRESENTATIVES OF THE BUREAU OF INDIAN AFFAIRS, THE NAVAJO ATTORNEY GENERAL'S OFFICE AND THE NAVAJO POLICE DEPARTMENT TO DISCUSS THE TRANSFER OF THE LAW ENFORCEMENT RESPONSIBILITIES FROM THE BUREAU OF INDIAN AFFAIRS TO THE NAVAJO POLICE DEPARTMENT. THE PRIMARY CONCERN OF ALL PRESENT WAS TO ENSURE THE CONTINUITY OF CRIMINAL PROSECUTIONS. AS OF JANUARY 1, 1989, NO ADDITIONAL INVESTIGATORS HAD BEEN HIRED BY THE NAVAJO DEPARTMENT OF PUBLIC SAFETY UNDER THE TERMS OF THE CONTRACT. INDEED, THERE APPEARED TO BE INSUFFICIENT TIME BETWEEN THE EXECUTION OF THE CONTRACT AND THE EFFECTIVE DATE OF THE CONTRACT TO HIRE ANYONE. SHORTLY AFTER EXECUTION OF THE CONTRACT, BUREAU OF INDIAN AFFAIRS CRIMINAL INVESTIGATORS WERE GIVEN REDUCTION-IN-FORCE NOTICES TO BE EFFECTIVE FEBRUARY 4, 1989. BETWEEN DECEMBER 30 AND FEBRUARY 4, THE BUREAU OF INDIAN AFFAIRS INVESTIGATORS HAVE BEEN ATTEMPTING TO SECURE OTHER EMPLOYMENT AND CLOSING OUT PENDING CASES.

FEW NEW INVESTIGATIONS HAVE BEEN OPENED. SINCE NO INVESTIGATIONS WERE IN PLACE UPON THE EFFECTIVE DATE OF THE CONTRACT, NO TRAINING HAS BEEN CONDUCTED BY LOCAL FEDERAL BUREAU OF INVESTIGATION OFFICES OR UNITED STATES ATTORNEYS' OFFICES ON FEDERAL COURT OR INVESTIGATIVE PROCEDURES. IT IS LIKELY THAT TRAINING WILL NOT TAKE PLACE UNTIL SOME TIME IN FEBRUARY. THE UNITED STATES ATTORNEYS' OFFICES IN ARIZONA AND NEW MEXICO HAVE NOTED A SUBSTANTIAL DECREASE IN CRIMINAL REFERRALS BEGINNING SOMETIME IN NOVEMBER OR DECEMBER.

THE BUREAU OF INDIAN AFFAIRS AND THE NAVAJO DEPARTMENT OF PUBLIC SAFETY STILL HAVE TO DETERMINE WHICH CASES UNDER INVESTIGATION WILL BE ASSUMED BY THE NAVAJO DEPARTMENT OF PUBLIC SAFETY. BY THE END OF JANUARY, THE UNITED STATES ATTORNEYS IN ARIZONA AND NEW MEXICO HAD NOT BEEN NOTIFIED AS TO WHICH AGENCY WOULD BE HANDLING INDIVIDUAL CASES AFTER FEBRUARY 4.

DURING NEGOTIATION OF THE CONTRACT, A STRONG CONTRACT PROVISION TO ENSURE INDEPENDENCE OF CRIMINAL INVESTIGATORS FROM POLITICAL INFLUENCE WAS DELETED FROM THE SCOPE-OF-WORK PORTION OF THE CONTRACT.

IT IS OUR VIEW THAT THE PURPOSE OF PUBLIC LAW 93-638 IS TO RETURN INVESTIGATIOS TO THE LOCAL LEVEL AND ENSURE MORE RAPID, COMPETENT INVESTIGATIONS. VIOLENT CRIME IS A SIGNIFICANT PROBLEM IN INDIAN COUNTRY. THE POLICY OF THE UNITED STATES IS, AND MUST CONTINUE TO BE, TO PROVIDE SAFETY TO THOSE PERSONS RESIDING ON INDIAN RESERVATIONS. WHEN A VIOLENT CRIME OCCURS, THERE MUST BE SUFFICIENT INVESTIGATIVE RESOURCES TO PROMPTLY INVESTIGATE THE

MATTER. THE TRANSFER OF CRIMINAL INVESTIGATION SERVICES FROM THE BUREAU OF INDIAN AFFAIRS TO A TRIBAL POLICE DEPARTMENT SHOULD NOT RESULT IN THE IMPAIRMENT OF CRIMINAL INVESTIGATIVE ACTIVITY.

BEFORE FUTURE CONTRACTS ARE NEGOTIATED, WE RECOMMEND THAT THE FOLLOWING STEPS BE TAKEN TO ENSURE A PROPER TRANSITION:

1. ALL TRIBAL CRIMINAL INVESTIGATORS SHOULD BE EMPLOYED PRIOR TO THE EFFECTIVE DATE OF THE CONTRACT.

2. ANY TRAINING OF CRIMINAL INVESTIGATORS AS TO FEDERAL COURT PROCEDURES SHOULD BE CONDUCTED PRIOR TO THE EFFECTIVE DATE OF THE CONTRACT.

3. CRIMINAL INVESTIGATORS SHOULD BE INSULATED FROM LOCAL POLITICAL INFLUENCE.

4. THE BUREAU OF INDIAN AFFAIRS CRIMINAL INVESTIGATORS SHOULD REMAIN IN PLACE FOR A SUFFICIENT PERIOD OF TIME TO ENSURE THAT PENDING INVESTIGATIONS ARE COMPLETED.

5. ANY INADEQUACIES OF TRIBAL PROCEDURES, SUCH AS THE STORAGE OF EVIDENCE, MUST BE CORRECTED PRIOR TO THE IMPLEMENTATION OF THE CONTRACT.

6. CONTINUING TRAINING MUST BE AVAILABLE TO ENSURE THE HIGH QUALITY OF INVESTIGATION.

THE PROSECUTION OF NON-INDIANS WHO COMMIT CRIMES AGAINST INDIANS WITHIN INDIAN COUNTRY

AS THE NON-INDIAN COMMUNITIES DEVELOP AROUND INDIAN COUNTRIES AND AS COMMERCIAL ACTIVITY AND TRAVEL THROUGH INDIAN COUNTRY EXPAND, THE NUMBER OF INCIDENTS OF NON-INDIANS COMMITTING CRIMES WITHIN INDIAN COUNTRY IS INCREASING. THESE CASES

RANGE FROM DOMESTIC VIOLENCE CASES -- TO SHOP-LIFTING -- TO VEHICULAR MANSLAUGHTER CASES AND OTHER SERIOUS FELONY OFFENSES.

18 U.S.C. 1152 AND 18 U.S.C. 13, THE ASSIMILATIVE CRIMES ACT, AUTHORIZES THE UNITED STATES TO PROSECUTE NON-INDIANS WHO COMMIT CRIMES WITHIN INDIAN COUNTRY AGAINST INDIAN VICTIMS. ALTHOUGH MANY STATE PROSECUTORS WOULD LIKE TO PROSECUTE CASES WHEN A NON-INDIAN DEFENDANT COMMITS A CRIME AGAINST INDIAN VICTIMS, STATE COURTS HAVE HELD THAT THERE IS EXCLUSIVE JURISDICTION IN THE UNITED STATES TO PROSECUTE THESE CASES. CERTAINLY THIS IS THE SITUATION IN MONTANA, ARIZONA AND NEW MEXICO. THE SITUATION IN THE WESTERN DISTRICT OF OKLAHOMA GRAPHICALLY DEMONSTRATES THIS JURISDICTIONAL QUAGMIRE.

THERE ARE PROBLEMS IN THE ENFORCEMENT OF CRIMES IN INDIAN COUNTRY UNIQUE TO EACH JURISDICTION. IN WESTERN OKLAHOMA, THERE ARE NO LARGE RESERVATIONS, BUT RATHER HUNDREDS OF THOUSANDS OF ACRES OF INDIAN ALLOTMENT AND TRIBAL TRUST LANDS SPREAD IN A CHECKER-BOARD PATTERN AS SMALL AS EVERY OTHER QUARTER-SECTION HAVING A DIFFERENT JURISDICTION. THE TRIBAL JURISDICTION IS NOT JUST IN ONE TRIBE BUT IN OVER 20 DIFFERENT TRIBES THAT EACH DIFFER SIGNIFICANTLY IN SIZE. THE GEOGRAPHY OF SUCH A PROBLEM IS A NIGHTMARE FOR LAW ENFORCEMENT. OFTEN A SURVEYOR IS NEEDED TO DETERMINE WHERE THE CRIME OCCURRED. LOCAL LAW ENFORCEMENT OFFICIALS, WHO HAVE NO JURISDICTION OVER INDIAN COUNTRY, ARE AFRAID OF LIABILITY PROBLEMS IF THEY CROSS THAT LINE. EVERY OTHER MILE OR QUARTER-MILE OF HIGHWAY IN WESTERN OKLAHOMA COULD BE INDIAN COUNTRY WHERE THE HIGHWAY PATROL OR OTHER STATE OR

LOCAL LAW ENFORCEMENT COULD NOT TECHNICALLY GIVE A TICKET OR MAKE AN ARREST. WHILE THE CROSS-DESIGNATION OF OFFICERS HAS BEEN UTILIZED IN OTHER JURISDICTIONS, IT DOES NOT RESOLVE ALL OF THE UNDERLYING PROBLEMS, NOR DO ALL THE COMMUNITIES WISH TO ENGAGE IN CROSS-DESIGNATION.

THE ARIZONA ATTORNEY GENERAL'S OFFICE, IN CONJUNCTION WITH ARIZONA'S COUNTY ATTORNEYS, HAS FILED A PETITION FOR WRIT OF CERTIORARI WITH THE UNITED STATES SUPREME COURT ON THE ISSUE OF JURISDICTION TO PROSECUTE A NON-INDIAN WHO COMMITS A CRIME AGAINST AN INDIAN VICTIM WITHIN INDIAN COUNTRY. THE CASE LAW ON THIS POINT IS AMBIGUOUS, YET, AS WE HAVE PREVIOUSLY MENTIONED, MOST STATE COURTS HAVE TAKEN THE SAME POSITION THAT ARIZONA'S COURTS HAVE TAKEN. TO BRING THIS MATTER FURTHER INTO PROPER PERSPECTIVE, UNDER CURRENT INTERPRETATION, IF A NON-INDIAN AND AN INDIAN SPOUSE HAVE A DOMESTIC DISPUTE INVOLVING A SIMPLE ASSAULT, THE FORUM FOR HANDLING THE ASSAULT IS FEDERAL DISTRICT COURT, RATHER THAN STATE COURT.

WE THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY AND WE WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE OR TO GIVE EXAMPLES FROM OUR INDIVIDUAL DISTRICTS OF THE ISSUES WE HAVE DISCUSSED.

PREPARED STATEMENT OF RICHARD STACY U.S. ATTORNEY DISTRICT OF WYOMING

Mr. Chairman and Members of the Committee --

It is a pleasure and rare privilege for me to appear before you and express my views as to the major problems concerning law enforcement on our Indian reservations.

As you consider the whole gamut of law enforcement problems in Indian country, including public corruption and conflict of interest issues, I would like to direct your attention to my experience with violent crime in Indian country. At the onset, I will note that my comments are based upon my law enforcement experience in the district of Wyoming and therefore, may or may not be representative of the situation in other districts. In particular I am concerned about improving the availability (or distribution) and quality of Bureau of Indian Affairs (BIA) law enforcement personnel.

When I became an Assistant United States Attorney in 1972, I quickly realized that the level of law enforcement on the Wind River Indian Reservation was woefully inadequate. When I returned to the office as United States Attorney in 1981, I found that the situation had not improved. Since then I have tried very hard, with the able assistance of William Eichelberger, the prosecuting attorney for Fremont County, Wyoming to increase the number of BIA criminal investigators and uniformed officers assigned to law enforcement on our reservation. We have had no luck. Whatever the reasons, there seem to be institutional barriers to the allocation of what I consider adequate law enforcement resources to investigate crime and prevent lawlessness in Indian country. The problem is two pronged, involving both the selection and training of BIA officers and the number assigned to the district.

The Wind River Indian Reservation consists of 1,888,462 acres and has a total population of around 8,000, including 6,254 Indian people. The reservation is home for two tribes which are traditional enemies, the Soshone and the Northern Arapaho. The crime rate is very high. The number of uniformed officers has fluctuated between six and twelve, and stands presently at eleven. This number, in my view, is not adequate.

The crime rate on the reservation is very high when compared to the rest of Wyoming. The Rocky Mountain area, including Wyoming, averages 2.5 uniformed officers per one thousand population. Given the higher crime rate on the reservation, and the extreme geographical dispersion of the population over a very large area, if the Indian people were to receive anything approaching equality with the non-Indian communities in Wyoming, they should have at least 3.5 uniformed officers per one thousand population. If that were the case, the Wind River Reservation would have 25 to 30 uniformed officers, not 6 to 12.

This lack of parity contributes to the high number of Murders, rapes, and assaults committed in Indian Country which could be avoided with increased patrols. Vehicular homicides, due to drunk driving, are occurring which easily could be prevented by pro-active DUI prevention patrols. Witnesses and victims are afraid to come forward and tell us what they know for fear of physical retaliation against themselves and their families. They know that, for the most part, there is simply no law enforcement presence to respond to their cries for help.

The case was succinctly and well stated by Mr. Eichelberger in a letter he wrote in 1985 to then Assistant Secretary of the Interior John Fritz:

> "I strongly believe that many of the law enforcement problems on the Reservation--including an almost universal refusal by the population to assist in criminal investigations, are directly the fault of the Bureau of Indian Affairs in not providing sufficient personnel to stop the roving 'clan wars' that we now have. I personally know of incidents where people have had their houses broken into in the middle of the night and the occupants have been beaten by multiple assailants, without any report being made to law enforcement authorities due to the victim's quite accurate perception that they could not be protected from retaliation."

Law enforcement on the reservation also suffers from poor quality. Some BIA or Tribal officers have criminal records themselves. To my knowledge, background investigations of prospective officers, are minimal at best. Sometimes, BIA officers investigate incidents involving members of their own families. To compound these problems, once BIA officers are hired they simply are not given the training they need to successfully do their jobs. I believe more and better training is needed on subjects such as the processing of crime scenes, interrogation of witnesses, report writing, and the law of search and seizure.

Over the years Mr. Eichelberger and I have worked with the BIA to address these problems but I feel our efforts have produced few tangible results. I am hopeful that these hearings will help focus attention on these issues, which, for at least two decades, has contributed to the Indian people on the Wind River Reservation receiving law enforcement below the standard enjoyed by other Americans.

Given resource limitations, overall the FBI, the United States Attorney's office, and the BIA are doing a fine job of protecting the Indian people. Most of the BIA officers on our reservation are good, earnest, hardworking individuals, but I believe not enough of them are assigned to provide an effective and visible law enforcement presence.

I am frustrated and look to you for answers. I would encourage you to examine how BIA managers allocate personnel, and whether positions are reallocated to effect changing circumstances. According to the BIA officials, part of the problem may be with the Tribes use of their United budgetary discretion regarding to law enforcement decisions. There is probably plenty of blame to go around.

I suspect that this problem and variations of it may exist on many reservations across the country. I urge you to do what you can to provide equal law enforcement services for Native Americans.

This Committee might examine:

a. The methodology by which it is determined how many uniformed officers and how many investigations are required for a given population.

b. What standards exist for and the nature and the extent of background investigations for BIA law enforcement personnel,

c. the content and quality of required training;

d. and mechanisms for Insulating BIA Police from Tribal politics.

Addressing these four areas of concern will help assure the quality and quantity of BIA and Tribal law enforcement resources in the longrun. In the interim, perhaps the FBI should maintain and increase the number of manhours devoted annually to Indian law enforcement. The continued and enhanced presence of the FBI might help minimize corruption and assure better fairness and impartiality in the administration of justice on our reservations.

APPENDIX

Additional Material Submitted for the Record

INDIAN CHILD SEX ABUSE EXHIBITS

SPECIAL COMMITTEE ON INVESTIGATIONS
Thursday, February 9, 1989
Afternoon Session

Letters from Indian mothers of sexually abused children [note: names are deleted to protect the privacy of the individuals] (2/6/89; 2/9/89)

Prepared Statement from Mary, Hopi Mother Testifying before the Special Committee on Investigations (2/9/89)

I'm a Hopi lady from First Mesa. My daughter was sexual abuse [sic] by her uncle when she was 13 years old. This effected her in her school work, her grades were going down she was getting F in all her grade [sic] and after she came out with it into open. We were close with my mom and after it happen it just fall apart and my mother turn against me and my family it was tearing me apart and I was carrying a big load and after it happen I started attending the parent support group and there the other parents were there to help me and my daughter if it wasn't for the parent support group I don't know where I'll be or what I'll do [sic] I'm really glad I'm attending the meeting. And now my daughter is doing okay with her school work and her grade [sic] really come up and she is a happy gal and always wanting to help me with cooking.

Mary Lou Foller
901 Hart Office Bldg.
Washington D.C.

January 9, 1989

Dear Ms Foller,

The subject I wish to write to you about is a very heartbreaking subject. It breaks my heart to know that this has happened to my family. My name is , I'm 32 years old. I have two children, ages 10 and 5. Just recently I was notified that my child had been molested at the age of 8 years. Many parents are lucky that they will never have to go through this nightmare. My daughter was 8 years old when this happened to her. I have lived in Albq. NM since my daughter was born and my boy was also born there. They were use to living in the city but due to me being a single parent then ,it was hard for me to survive the city. The other reason for my moving back was also because I taught that in the city the children were exposed to many negative and damaging atmosphere. I wanted the best for my children. I thought that perhaps life would be easier on the Navajo/Hopi Reservation.

On November 18, 1988, I was notified that my 10 year old daughter was sexually molested 2 years ago. She was 8 years old then. Today, I can talk about it. On November 18th I was horrified to find out that this had happened to Tina. I wasn't to sure what to say to her or what to think about myself. Maybe if I had done thing differently in my life my baby wouldn't have gone through this. Today I know it wasn't our fault. When I was notified that day I was sure I would have some kind of help from the Indian Health Services as soon as possible. I know this a very serious offense that could happen to a small helpless child. I was sure this was a critical case. Well I waited and waited.

I got tired off waiting and after numerous of phone calls I decide I wasn't going to get any where by just sitting and waiting so I called the Substance Abuse and Mental Health Counselor out of Fort Defience, AZ. came out shortly after I notified her. She had to travel over a hundred miles to see Tina. Keams Canyon is located only 7 miles west of here. I feel Tina is on the road to a health recovery and I myself do feel better but I am angry with the Indian Health Service in Keams Canyon because I feel that it is not important to them that I was going through a very critical problem. I wonder why my cry for help wasn't met. Was my case put on the shelf. Maybe because I am a Navajo and the Indian Health Service is located on the Hopi Reservation. Whether or not we are Navajo or Hopi shouldn't matter. Our heart are the same, we see the same sun, we breath the same air and we feel just the same. Perhaps this isn't the problem but somewhere it has to be solved. My daughter and I are lucky we knew some people who deal with this kind of problems.

Many off our Indian people are uneducated. They are unable to cry out for help because we are taught in our culture to be proud and solve your problems at home. This kind of problem is something that damages the child's mind forever. My daughter will scared forever with this sexual abuse, but through the help off the white world she will be able to cope with it and hopefully understand.

My heart is heavy because I know that there are cases sitting on selves somewhere. Little children are suffering from abuse because they are waiting for help or waiting until there are enough funding from the government. The government are helping the homeless people and problems else where in the world but what about our children here in the United States. The children here in this immediate area are put on selves waiting for certified personal to help them and in the mean time abuse is continuing on. I know off some women near here who are brave and kind enough to help. I hope the Lord blesses them many times over because they are the light of hope for families who have the same problem as I do. Why does these women have to spend money out of their own pocket to make give a kind word off encouragement to families who are torn apart because their child was abused. The government spends monies on programs such as abortions,homeless,foodstamps and numerous other program where people are able to help themselves but our young children are helpless. Why aren't there enough funding for them. These children are our future. our plan and our hope so why are we putting them on selves to collect dust or their name happens to appear then they are remembered.

I finally received a phone call from January 3, 1989. Still she didn't have any information for me but in the mean time we are getting self help and we are trying to handle everything on our own. Today we went down to see her and all she said was she had an accident and was unable to see us.

In our culture we pray every day with white corn meal to the morning star and to the sun rise that our life will be straight and happy and I pray for the safety of my children because they are our leader for tomarrow, they will be our future. We pray with our corn pollen but this isn't enough, we need help. Our children need our help so I ask you to see if there is anything you can do to better our future for our children who have been hurt by the cruel people. They deserve a chance at happiness just like anybody else in this universe. If there is any question please feel free to call me and please do call me when you have some news for our children. My phone number is

Thank You

I have enclosed a copy of a poem which I feel hits home. There are people out there that shares the same feelings I do.

Thanks again

"PROUD MOMENTS"

The young
Are the sunrise of our past.

Look into their
Faces:
There is a strong spirit
Burning in their eyes.

Many great thoughts
Will come from their curious
Minds.

Some will hear
Voices of noble chiefs
Whispering in their ears
To fulfill their promptings;
And then there will be
Many proud moments.

Many will see the visions
And dreams
Granted to those
With good hearts and spirits.

The young are ready
To be led for a season;
Then,
We will see them leading
With power from above.

Many proud moments are ahead.

—Howard T. Rainer

MARY'S STATEMENT
CHILD SEX ABUSE HEARINGS
Thursday, February 9,1989; afternoon
SPECIAL COMMITTEE ON INVESTIGATIONS

Let us turn the time back as far as forty (40) or more years or maybe even more futher, and let us take a very close look at our people. How many illegitimate children do we account for? Was it because of some kind of abuse that noone wants to acknowledge?

I myself can tell you it was in existence than, even a person who was suppose to be helping the people was an abuser (Medicine man), so who can tell me that this is not so? What I am referring to is sexual abuse. My burden became lighter when I finally unburdened myself in order to help others that can understand what they are going through. Sexual abuse is hard to talk about but we can no longer keep silent.

We want children, parents, our village members to become aware of all the various abuses on our reservation and see what and how we can deal with them. No longer will we deny it's existence, nor will we close our eyes to them. We see sexual, drugs, and alcohol abuse in each village and it is distroying our people. Let us look at ourselves--are we one of them? I myself can say, yes, I am., but will we all acknowledge that we are?

This I will say, it is not because of the anglos that this is becoming out of porportion, it is because we are becoming aware! It is happening and it has happened, it was already there! We can no longer keep silent and not do anything about it. We need help, we need these professionals to help us, for who will? If our own Hopi People become trained, they will help us and we need these trained people from our communities.

As one man on another reservation did, he left the hard core in jail and relased the rest. The hard core to him were the wife beaters and the boot-leggers. Who do we as Hopis consider the hard core? Winenos?

Looking at my own village I hate to say that in two separate families with two suicides in each home, more than fifteen deaths in our village due to alcohol and drugs, all young people, more than five suicide attempts, even maybe more. Our young children living in situations like these are suffering inside, will they be next to become the abusers, or to die?

Looking again at my own village, I can varify four homicides, what has been done to help the family that wants something done? Or is it going to end up like the rest - unsolved!

Let's not close our eyes, ears and mouths like the three monkey's and be "us" humans and become aware and educate our people in ways to prevent all these. There is a alot more but will you listen and actually read or hear my plea? Thank you.

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